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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 12

HEBER KIMBALL CLEVELAND, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 13

HEBER KIMBALL CLEVELAND, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 14

HEBER KIMBALL CLEVELAND, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 15

DAVID BRIGHAM DARGER, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 16

VERGEL Y. JESSOP, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

[CONTINUED ON SECOND COVER]

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 29, 1945.

CERTIORARI GRANTED MARCH 12, 1945.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 23

HEBER KIMBALL CLEVELAND, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 24

HEBER KIMBALL CLEVELAND, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 25

HEBER KIMBALL CLEVELAND, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 26

DAVID BRIGHAM DARGER, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 27

VERGEL Y. JESSOP, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 28

THERAL RAY DOCKSTADER, PETITIONER,

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L. R. STUBBS, PETITIONER,

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[fol. a] [Caption omitted]

[fol. 1]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

No. 14475 Criminal

UNITED STATES OF AMERICA, Plaintiff,

v.

HEBER KIMBALL CLEVELAND, Defendant

INDICTMENT—Filed March 6, 1944

The grand jurors for the United States of America impaneled and sworn in the District Court of the United States for the Central Division of the District of Utah at the November term of said court in the year 1943, and inquiring for said District of Utah, upon their oath present:

That heretofore, to-wit, on the 1st day of November, 1941, at Salt Lake City in the Central Division of the District of Utah one Heber Kimball Cleveland alias Fred Cleveland, hereinafter called defendant, unlawfully and feloniously, by means of automobile transportation, to-wit, 1936 Packard Sedan, Motor No. X33083, did knowingly transport, cause to be transported and knowingly aid and assist in obtaining transportation for and in transporting a certain woman, to-wit, Kathryn Lucy Collinwood, from Salt Lake City in the Central Division of the District of Utah to Evanston in the District of Wyoming, then and there for the purpose of debauchery and for a further immoral purpose, to-wit, for the purpose of having sexual intercourse with the aforesaid woman, the said Kathryn Lucy Collinwood, not then being the wife of defendant, and for the further immoral purpose, that the aforesaid woman should be and act as his mistress and concubine; contrary to the form of the statute in such case made and provided and [fol. 2] against the peace and dignity of the United States of America.

A True Bill:

Don Clyde, Foreman of the Grand Jury.

Dan B. Shields, United States Attorney.

IN UNITED STATES DISTRICT COURT

MOTION TO QUASH TRUE BILL—Filed March 20, 1944

Comes now the defendant, Heber Kimball Cleveland, by his counsel and respectfully moves the court to quash each and every count of the alleged True Bill in the above entitled matter, for the reasons and upon the grounds:

I

That said True Bill does not state an offense against the laws of the United States, and in particular does not state an offense under Section 398-T 18 U. S. C. A. Mann Act.

II

That the court is without jurisdiction to try the alleged charge set forth in said alleged True Bill.

III

That the formation and composition of the grand jury which presented the alleged True Bill to this court was and is illegal and void; that the grand jury finding said alleged True Bill, and each member thereof, by reason of bias and prejudice had against this defendant at the time of convening and finding said alleged True Bill, was disqualified under the laws of the United States and of the State of Utah, to sit as grand jurors in this matter, and by reason thereof the substantial rights of this defendant have been impaired and he cannot safely go to trial under said alleged True Bill, and the defendant respectfully requests the court to open up the proceedings of said grand jury for inspection and investigation and to permit such further proceedings as may be justified in support of this assignment.

[fol. 3] This assignment is supported by the affidavit of the defendant herein and which is made a part hereof.

Claude T. Barnes, J. H. McKnight, Knox Patterson,
Attorneys for Defendant.

CERTIFICATE OF MERIT

We, the undersigned, attorneys for the defendant above named, hereby certify that in our opinion the foregoig Motion to Quash True Bill is meritorious and that the same

is not filed for the purpose of delaying any proceedings.

Dated this 20 day of March, 1944.

Claude T. Barnes, J. H. McKnight, Knox Patterson,
Attorneys for Defendant.

Affidavit of Heber Kimball Cleveland

State of Utah,
County of Salt Lake, ss:

Heber Kimball Cleveland, being first duly sworn, deposes and says:

That he is the defendant above named and makes this affidavit in support of a Motion to Quash True Bill filed by his counsel herein as to each count of said alleged True Bill.

That affiant is of the age of 42 years and has been a continuous resident of Salt Lake City, State of Utah, for more than 12 years last past, and was intermittently, prior to said time, a resident of the State of Utah.

That affiant was born of a family who were members of the Church of Jesus Christ of Latter-day Saints, hereinafter referred to as the Mormon Church, and this affiant became a member of said church, formally, in the year 1930.

That affiant has been, all his life, an earnest and profound believer in the doctrine and principles of said Church, and especially this affiant has all his life believed in that particular tenet of said church which teaches the doctrine and practice of plural marriages; and that such doctrine is [fol. 4] especially enjoined upon the members of said church by the teachings thereof and by the Bible upon which it is founded.

That in accordance with the principles and doctrine of said church and the invocation of the members thereof to teach and practice plural marriages, this affiant has always believed in, taught and practiced the doctrine of plural marriages, having upon five separate occasions married in polygamy.

That about the year 1920, there became a breach in the Mormon Church with reference to the practice of polygamy resulting in a large factional disagreement by reason of which the Mormon Church sought to and did attempt to excommunicate many of its members from Church recognition and worship with the dominant church and this affiant was one of such group so attempted to be excommunicated from the dominant church.

That due to the factional disagreement in said Church, intense bitterness has grown up, and said bitter feeling is more intense among the high priesthood and the quorums thereof of the dominant church and the members of said high priest quorums, which said high priest quorums have the actual controlling power of the dominant church and exercise the same and dominant and control all excommunications therefrom and other matters of like importance; that said high priesthood in large measure dominates and controls the thinking and attitudes of the lay members of said church and the members of the lesser priesthood thereof.

This affiant is informed and believes, and so says, that said dominating high priesthood has aided, assisted and incited the bringing of this alleged True Bill and the convening of the grand jury for that purpose, and that one member of said high priesthood, viz., the Bishop of the Ward of which this affiant at said time belonged, informed this affiant, prior to the call and convening of the grand jury which brought this alleged True Bill, that they, the controlling authorities of said dominant church, intended to lay this charge against this affiant and affiant states therefore that this charge was incited by said high priest-[fol. 5] hood; and this affiant, on his information and belief, states further:

That Don Clyde, the foreman of the grand jury presenting this alleged True Bill, is a prominent and dominating figure in the high priesthood quorums of the dominant church and holds official position as such and so this affiant verily believes said Don Clyde, when he sat as a grand juror in this matter, was not qualified to so sit by reason of his animosities, bias and prejudice against persons so accused and so was unable and at all times has been unable to fairly or impartially sit as a grand juror in this matter.

Affiant further says, upon this information and belief, that a large majority of the grand jurors, if not all thereof, are likewise influential members of the Mormon Church and felt themselves impelled to follow the preachings and practice of said church with reference to the excommunicatio.. of this affiant and his associates so attempted to be excommunicated, and that the spirit of animosity and enmity toward this affiant was carried into the considerations of the grand jury in the presentation of said alleged True Bill.

Affiant further says, upon his information and belief, that prosecution of the affiant in this case is a result of combined and concerted action on the part of high church officials to harass and degrade this affiant and other excommunicants and in furtherance thereof such church officials have filed charges involving from 40 to 50 excommunicants and in particular have charged a group of 12 with conspiracy to violate the laws of the United States and that three informants on six overt acts contained in said purported conspiracy charges are members of the high priesthood quorum of the Mormon Church and that the matter alleged to have been mailed by the said alleged conspiring defendants was mailed to the recipients addressed to the high church offices of the Mormon church.

Affiant further states, upon his information and belief, that the majority, if in fact, not all, of the testimony in this matter had and evidence produced before the grand jury which returned this alleged True Bill, was had from members of the priesthood quorums of said dominant church in good standing at the time of said inquisition and that, [fol. 6] therefore, the members of the grand jury was constituted as aforesaid of members of a mind to receive as unimpeachable such testimony and evidence so produced before said grand jury to the prejudice and in violation of the lawful rights of this affiant to have this matter investigated by a fair and impartial grand jury.

Affiant further says that at the General Conference of the Mormon Church held in the month of April, 1931, the supreme head of said Church made declaration, and the record thereof as shown, as follows:

"We have been, however, and we are entirely willing And Anxious, Too, that such offenders against the law of the State (those living in plural marriage) should be dealt with and punished as the law provides. We have been and we are willing to give such Legal Assistance as we legitimately can in the Criminal Prosecution of such cases. We are willing to go to such limits not only because we regard it as our duty as citizens of the country to assist in the enforcement of the law and the suppression of pretended 'plural marriages', but also because we wish to do everything humanly possible to make our attitude toward this matter so clear, definite and unequivocal as to leave no possible doubt of it in the mind of any person. * * * I

would like all those in this congregation who feel to sustain this statement that I have read to you to manifest it as the Apostles and All of the General Authorities have done, by raising their right hands.

"I have never seen such a lot of hands held so high in my life."

"All those who are opposed to this statement will please raise their hands. (no hand was raised.) Our enemies (those believing in the principle of celestial or plural marriage) do not seem to be here." (Brackets ours)

That continuously since said conference the Church has constantly and consistently sought the criminal prosecution of this affiant and his associates and has constantly and persistently continued to otherwise persecute and harass this affiant and his associates.

Affiant mentions these items and shows this evidence of [fol. 7] such bias and prejudice for the purpose of exemplifying to the court the necessity that the records and doings of the grand jury investigation in this matter be opened and proper investigation made thereof and any other proper representation made to this court with respect thereto; and in this connection affiant refers the court to 105-19-5, Utah Code Ann. 1943, Chapters 18 and 19.

This affidavit is made in support of motion to quash in cases numbered 14475, 14476, 14477 Criminal.

Further affiant sayeth naught.

Heber Kimball Cleveland.

Subscribed and sworn to before me this 20 day of March, 1944. Knox Patterson, Notary Public. Residing in Salt Lake City, Utah. My commission expires: May 19, 1947. (Seal.)

Recd. copy of foregoing this 20 day of Mar. 1944, at 9:50 A. M. John S. Boyden, Assistant Dist. Atty.

IN UNITED STATES DISTRICT COURT

MINUTE ENTRY—March 20, 1944

On this 20th day of March, 1944, plaintiff appearing by John S. Boyden, Assistant United States Attorney, and defendant in person, and by Claude T. Barnes, Knox Patter-

son and J. H. McKnight, his attorneys, and at request of counsel, these three cases were consolidated for further proceedings. Defendant Cleveland was arraigned, gave his true name as Heber Kimball Cleveland, waived reading to him of the indictment, and entered his plea of not guilty to each of the indictments, and to all of the counts. By stipulation of counsel, it is ordered that trial by jury be waived, and case continued until March 21, 1944.

IN UNITED STATES DISTRICT COURT

STIPULATION OF FACTS—Filed March 20, 1944

Comes now parties in the above entitled action, United States of America by Dan B. Shields, United States Attorney, and John S. Boyden, Assistant United States Attorney, [fol. 8] the defendant Heber Kimball Cleveland by J. H. McKnight, Claude T. Barnes, and Knox Patterson, Attorneys-at-law, and stipulate that the above entitled cases may be tried before the Court sitting without a jury upon the following statement of testimony, which would, were it not for this stipulation, be introduced by the government.

That the records of the County Clerk's office in and for Salt Lake County, Utah, show that the defendant Heber Kimball Cleveland married Zola Chatwin on the 15th day of September, 1938.

That defendant continued to be the lawful husband of Zola Chatwin until the 5th day of April, 1943, when his divorce in Evanston, Wyoming, became final.

That he married Marie Beth Barlow April 12, 1943, at Evanston, Wyoming.

That at the time of the divorce of Cleveland and Zola Chatwin there was no estrangement, and that after Cleveland's divorce from Zola Chatwin he continued to live with her as man and wife.

That he was also living with a girl by the name of Marie Beth Barlow, who had, on the 10th of December, 1941, borne a child by him.

That prior to his living with Marie Beth Barlow he had gone through some religious ceremony according to the beliefs of a religious cult known as Fundamentalists, by them known as plural or Celestial marriage, but contrary to the laws of the states of Utah and Wyoming, and that

Marie Beth Barlow was fourteen years of age at the time she went through said religious ceremony.

That the Juvenile Court of the State of Utah had taken Marie Beth Barlow into custody as a result of the birth of her legally *illegitamate* child, and had released her upon the condition that she have no further connection with the defendant herein.

That in order to evade the ruling of the court, Marie Beth [fol. 9] Barlow was secreted by defendant for a part of time in a tourist camp in Salt Lake, and those inquiring were informed that she had gone to Oregon to visit with relatives.

That the parents of Marie Beth Barlow were also members of the so-called polygamous cult, and that the parents, together with defendant Cleveland and Zola Chatwin, agreed that Zola Chatwin would get a divorce and that after the same had become final, the defendant would marry Marie Beth Barlow at Evanston, Wyoming, with the consent of her parents, which was done at the time aforesaid.

That in September of 1943 Marie Beth Barlow gave birth to another child by Heber Kimball Cleveland.

That a few days prior to August 14, 1941, the defendant was placed in the company of Kathryn Lucy Collinwood, of the age of twenty-one years, at Salt Lake City, by reason of a visit by defendant with a friend at the Salt Lake General Hospital where said Kathryn Lucy Collinwood was in training as a nurse.

That on August 14, 1941, the defendant made a date with Kathryn Lucy Collinwood which was accepted by her; that between the 14th and 16th of August, 1941, inclusive, they spent considerable time together, during which the defendant discussed the matter of plural marriage with Miss Collinwood.

That the marriage was not in accordance with the laws of the state of Utah, but the defendant's plural marriage to this girl was performed by Joseph Musser, a member of the Priesthood Council of the Fundamentalists, on August 16, 1941.

That after her marriage and prior to the 1st of November, 1941, the defendant and Miss Collinwood had engaged in sexual intercourse on several occasions.

That defendant had promised Miss Collinwood a wedding trip or honeymoon, and that for various reasons the same was postponed until November 1, 1941, when the defendant took Miss Collinwood in a 1936 Packard sedan, Motor No.

X33083 from Salt Lake City to Evanston, Wyoming, where [fol. 10] he engaged a room in the Evanston Hotel; that he remained with Miss Collinwood at the Evanston Hotel, where they engaged in sexual relations during the day and night until they returned to Salt Lake City on November 2, 1941.

That after returning to Salt Lake City the defendant also lived with three other plural wives, which included his legal wife.

That a few weeks prior to the 5th day of April, 1942, Kathryn Lucy Collinwood arranged with one Marcia Covington, seventeen years of age, to have a date with the defendant; that other dates were arranged, but defendant did not engage in sexual intercourse with Marcia Covington prior to his plural marriage to her.

That on the evening of April 5th, after defendant and Marcia Covington had spent some time drinking wine, Marcia Covington consented to enter into a plural marriage with defendant; that it was agreed between them that as a honeymoon he would take her to St. George, Utah, there to be married by one of the Priesthood Council, but when it was learned that the person to perform the marriage could not be located, they agreed together to go to California as a honeymoon trip and there be married by a member of the cult.

That upon arrival in California they were not actually married and did not engage in sexual intercourse until consent for such marriage was obtained from Henry Covington, also a member of the cult and father of Marcia Covington.

That they were married by a member of the cult in plural marriage on the 12th day of April, 1942, after which marriage the defendant and Marcia Covington spent the evening and night at Hermosa Beach and at an automobile tourist cabin, and that the next day the defendant took Marcia Covington to see some relatives; that Marcia stayed with these relatives and refused to go further with the marriage.

That upon his return to Salt Lake defendant admitted to Kathryn Lucy Collinwood that he had engaged in sexual intercourse with Marcia the night of their marriage.

[fol. 11] That the automobile used in the aforesaid transportation on April 5th was the same Packard heretofore described and was owned by the defendant.

That about June 27, 1942, as a result of discussion and meetings of leaders of the cult, it was determined that

Kathryn Lucy Collinwood should be immediately taken from the state of Utah, as she was being investigated for doing obstetrics work without a license, and it was believed that her arrest was imminent. As a result, on the 27th day of June, 1942, the defendant took Kathryn Lucy Collinwood to Grand Junction, Colorado, leaving his other plural wives at Salt Lake City; and at Grand Junction, Colorado, he obtained living quarters and a job as a tailor.

That about the 9th day of August, 1942, the defendant informed his plural wife, Kathryn Lucy Collinwood, that he was coming to Salt Lake City to get Marie Beth Barlow and bring her back to Grand Junction so that she might become pregnant.

That on the 9th day of August, 1942, the defendant, in the heretofore described Packard automobile, transported Marie Beth Barlow from Salt Lake City, Utah, to Grand Junction, Colorado, where she lived with him as man and wife, engaging in sexual intercourse.

That during the time Marie Beth Barlow and Kathryn Lucy Collinwood were in Grand Junction he would alternate sleeping with these two women.

That thereafter Marie Beth Barlow was returned to Salt Lake City by the defendant.

That as a result of the sexual relations between defendant and Marie Beth Barlow immediately following the 9th day of August, 1942, Marie Beth Barlow did not become pregnant, and the defendant again informed Kathryn Lucy Collinwood that he would return to Salt Lake City and bring Marie back again in order that she might become pregnant.

That on or about the 12th day of October, 1942, the defendant, again in the same Packard sedan automobile, transparted Marie Beth Barlow from Salt Lake City, Utah, to Grand Junction, Colorado, where he lived with her as man [fol. 12] and wife for a period of several months and that on September 18, 1943, Marie Beth Barlow gave birth to a baby by the defendant, at Salt Lake City, Utah.

That during the time the defendant lived at Grand Junction he would alternate living with his various plural wives and would introduce them to people in Grand Junction as sisters-in-law, or other relatives.

That prior to the 5th day of December, 1942, Kathryn Lucy Collinwood had returned to Salt Lake City and while she was in Salt Lake City the defendant sent word for her to come back to Colorado, and also sent her money to come

on the train; that as a result of such request, on the 5th day of December, 1942, Kathryn Lucy Collinwood took the D. & R. G. Railroad train at Salt Lake City, used the money furnished her by the defendant to buy a ticket, and traveled from Salt Lake City, Utah, to Grand Junction, Colorado, where defendant and Kathryn Lucy Collinwood resumed their sexual relations as man and wife for about one month.

That during all such times herein referred to, with such assistance as his wives might render by themselves working, the defendant took care of his wives and children. Defendant claimed the Fundamentalists taught and practiced the original doctrines of the Mormon Church.

Dan B. Shields, United States Attorney. John S. Boyden, Assistant United States Attorney. Claude T. Barnes, J. H. McKnight, Knox Patterson, Attorneys for defendant.

Dated this 20 day of March, 1944.

[fol. 13] IN UNITED STATES DISTRICT COURT

MINUTE ENTRY—March 21, 1944

On this 21st day of March, 1944, come again said parties by their respective attorneys as aforesaid, and Defendant Cleveland in person, and said defendant consented that case might be tried on stipulation of facts and jury expressly waived. Ordered that further hearing be continued until March 22, 1944.

IN UNITED STATES DISTRICT COURT

PORTION OF REPORTER'S TRANSCRIPT—March 21, 1944

Mr. Boyden: Heber Kimball Cleveland, will you come forward please.

You are the defendant in these three cases, 14,476, 14,475 and 14,477?

Mr. Cleveland: Yes, sir.

Mr. Boyden: It is perfectly agreeable with you that the case might be submitted upon an agreed statement of facts as prepared by your counsel in conjunction with our office?

Mr. Cleveland: Yes, sir.

Mr. Boyden: And that after these facts are submitted it may be tried without a jury, and you do hereby expressly waive a jury, consenting it might be tried before the court on this stipulation?

Mr. Cleveland: That is right, yes, sir.

Certificate

I certify that the within pages numbered 1 to 3 inclusive, contain a true and correct transcript of my shorthand notes of the within proceedings had in said cases on March 21, 1944.

E. M. Garnett, Official Reporter.

Filed June 16, 1944.

[fol. 14] In United States District Court

Motion for Verdict for Defendant—Filed March 22, 1944

Comes now the defendant above named and respectfully moves the above entitled court as follows:

That the True Bill and indictments thereon laid in the above entitled matter be dismissed and the defendant discharged from custody and his bondsmen exonerated.

In support of said motion, and as grounds therefor, the defendant relies and will rely upon the laws of the United States of America, the laws and constitution of the State of Utah applicable in the premises, the files and the record herein, the plea of not guilty entered by defendant, and the following statement:

1. The evidence now before the Court is insufficient to support a verdict or decision of guilt on the part of the defendant.

2. That the charge laid in this matter is not within the contemplation of the section or sections of law cited in the True Bill, and therefore this court is without jurisdiction to do other than dismiss the action.

Dated this 22 day of March, 1944.

Claude T. Barnes, Knox Patterson, J. H. McKnight,
Attorneys for Defendant.

Certificate of Merit

We, the undersigned, attorneys for the defendant above named, do hereby certify that in our opinion the foregoing

Motion is meritorious and that the same is not filed for the purpose of delaying any proceedings.

Dated this 22 day of March, 1944.

Claude T. Barnes, Knox Patterson, J. H. McKnight, Attorneys for Defendant.

[fol. 15] IN UNITED STATES DISTRICT COURT

MINUTE ENTRY—March 22, 1944

On this 22nd day of March, 1944, come again said parties by their respective attorneys as aforesaid, and further hearing on these cases was resumed. The court heard the arguments of counsel on defendant's motion to quash the indictment, and motion for verdict for defendant, and the motion to quash the indictment was overruled by the court, and ruling on motion for verdict was held in abeyance until briefs are received by the court. Defendant granted until April 12th to submit its brief, and plaintiff until May 3rd, and reply brief of defendant to be submitted May 8th. All briefs to be lodged with the clerk and the clerk to forward same to Judge T. Blake Kennedy at Cheyenne, Wyoming, at which time the case will be taken under advisement. The hearing on the motion to suppress and recover papers and property unlawfully seized was postponed pending outcome of case.

IN UNITED STATES DISTRICT COURT

JUDGE'S MEMORANDUM—Filed May 22, 1944

Dated May 22, 1944.

KENNEDY, Judge:

The above entitled causes involve indictments against the Defendants in the form of eight separate and distinct charges some of which indictments include more than one count. Eight of these indictments are brought under the Mann Act, or "White Slave Traffic Act", (18 U. S. C. A. 398), and one under the so-called "Lindbergh Act", (18 U. S. C. A. 408a).

After the presiding Judge of the District had retired in consequence of an affidavit of prejudice in one case and

likewise voluntarily withdrew in the other cases, the writer of this memorandum was assigned to the Utah District for the purpose of disposing of said cases.

Motions were interposed by defendants to quash the indictments upon the ground that they were not properly brought under the Acts mentioned, and on account of irregularities occurring in connection with the Grand Jury which [fol. 16] returned the indictments. These Motions to quash were all argued orally and overruled, the first motion upon the ground that the indictments had every appearance of regularity upon the face to be within the scope of the Act under which they were brought, and the second upon the ground that there was no evidence or proof before the Court that there was any bias or prejudice or irregularities in the action of the Grand Jury upon which the Court could presume to act in the premises, other than an allegation that the foreman of said jury was a member of a different sect of which the defendants were alleged to be adherent, which was considered insufficient to sustain the motion in the absence of any affirmative showing that the foreman of the grand jury personally entertained views antagonistic to the defendants or, even if he did, that there was no showing as to any bias or prejudice on the part of any of the other members of the grand jury returning said indictments. The Court will now adhere to the original rulings upon said motions.

After considerable discussion in open Court as to the manner in which said cases would be disposed of, a trial jury being then and there in attendance, it was agreed that the several cases would be submitted to the Court without the intervention of a jury upon a stipulation of facts, and the Trial Judge thereupon reluctantly, if for no other reason than to protect the Court and the community from unsavory details of evidence and unpleasant notoriety, accepted the responsibility with the understanding that the defendants would be severally arraigned, enter their pleas of not guilty, waive trial by jury and agree personally to abide by the stipulation of their counsel as to the facts in each case, which procedure was thereafter carried into effect. On behalf of each and every defendant a motion for his discharge and entry of judgment of not guilty was interposed and the Court provided by order that trial briefs should be filed by counsel after the receipt of which the decision in the *serveral* cases would be taken under advise-

ment. Such trial briefs have been submitted and are now before the Court for consideration.

It would be impractical in this memorandum to set out in detail the charges in the indictments or the stipulated facts [fol. 17] upon which the government relies in support of the charges therein contained, but a brief rehearsal in each of the cases would seem to be necessary as a foundation for a decision of the Court, omitting some of the more sordid details.

In the Cleveland case, No. 14475, it is charged that the defendant transported Kathryn Lucy Collinwood from the State of Utah to the State of Wyoming for the purpose of debauchery and for the purpose of sexual intercourse, said women not then being the wife of the said defendant but for the purpose that she should be and act as his mistress and concubine. In No. 14476 it is charged that he transported Marcia Covington from the State of Utah to the State of California for the same purposes as set forth in the previous indictment; and in No. 14477, in the first count, it is charged that he transported one Marie Beth Barlow from the State of Utah to the State of Colorado for the purposes aforesaid; in the second count it is charged that the defendant transported the same women for the purposes aforesaid from the State of Utah to the State of Colorado, and in the third count that he transported Kathryn Lucy Collinwood from the State of Utah to the State of Wyoming for the same purposes. In the stipulated facts, which were accepted by the agreement as the proofs in the case, it appears that the women were transported by the defendant as charged in the indictments and that sexual relations were indulged between the defendant and each of said women and that he lived with each of said women in the relationship of husband and wife. It is stipulated that the defendant committed said acts as a believer in the practice of polygamy in having more than one wife at the same time and that in so acting he was practicing the origin doctrines of his church.

In the Darger case, No. 14478, the defendant is charged with unlawfully transporting, for the immoral purpose of having one Jean Barlow to live with him as his mistress and concubine, from the State of Colorado to the State of Utah. In the stipulation of facts it is shown that the defendant was married in 1926 to Aldora McDaniel, from whom he secured a divorce in Nevada in April, 1943, but that in 1942

the defendant had two plural wives in addition to his lawful [fol. 18] wife and that one of these, to-wit: Jean Barlow, he transported by automobile from the State of Colorado to the State of Utah where he lived with the said Jean Barlow and his other wives in a state of plural marriage, all of which acts were in accordance with a religious belief of defendant.

In the Jessop case, No. 14480, the indictment charges that the defendant transported one Mae Johnson from the State of Utah to the State of Arizona for the purpose of debauchery and for the further immoral purpose that the said woman should become his mistress and concubine. In the agreed statement as the government testimony, it appears that the defendant was married in 1926 to one Verna Spencer and was and is still the lawful husband of said Verna Spencer, having had nine children as the issue of said marriage. The thereafter one Mae Johnson came to live at the home of the defendant and he secured her agreement to enter into a marriage in accordance with the Fundamentalists' belief in the doctrines and teachings of the Mormon Church and that he lived with her, the said Mae Johnson, as man and wife, at the same time he was living with and supporting his legal wife, and that in July 1943, he transported the said Mae Johnson from the State of Utah to the State of Arizona and there lived with her as man and wife.

In the Chatwin, Zitting and Christensen case, No. 14481, it is charged that the defendants inveigled decoyed one Dorothy Wyler, a minor child of the age of fifteen years, and caused her to be transported from the State of Utah to the State of Arizona. In the stipulation of facts it appears that the government would have offered proof that the defendant, Chatwin, approached the parents of the girl, Dorothy Wyler, with regard to her becoming a housekeeper; that said girl was then about fourteen years of age, backward in school, and had a mental age of about seven years and two months; that while so working in the home of the defendant Chatwin she was taught the doctrine of plural marriage to which she became converted, and entered into a plural marriage with the defendant Chatwin and that thereafter the defendants convinced the said Wyler that she should go to [fol. 19] Mexico to be married legally to the said Chatwin and, in pursuance to such design, she was transported and caused to be transported by the defendants from the State of Utah to Juarez, Mexico where she and the defendant went

through a purported marriage ceremony and thereafter she was transported to Short Creek, Arizona, all of which transportation was without the consent and against the wishes of the parents of the said Dorothy Wyler and while she was under the authority of the Juvenile Court of Utah County, Utah, which said acts were performed in accordance with a religious belief in plural marriages.

In the Dockstader and Stubbs case, No. 14483, it is charged that the defendants did transport and cause to be transported one Anna Lindgreen from the State of Utah to the State of Arizona for the purpose of debauchery and the further immoral purpose that the said woman should cohabit with the defendant Dockstader as his mistress and concubine. In the stipulation it appears that the defendant Dockstader was living in a plural marriage condition with one Anna Lindgreen while at the same time and prior thereto he was married to Leah Kilpack Dockstader in Salt Lake County, Utah; that in July 1943, the defendant Dockstader made arrangements with the defendant Stubbs to transport Anna Lindgreen and some furniture to Short Creek, Arizona where the said Anna Lindgreen was to live in plural marriage with the defendant Dockstader and his legal wife, Leah Kilpack Dockstader; that at the time of said transportation both of said defendants were members of a religious cult known as Fundamentalists and professed belief in the plural marriage under the original concepts of the Mormon Church.

In the Petty case, No. 14489, the defendant is charged with unlawfully transporting, by automobile, one Mary Marguerite Ford, from the State of Idaho to the State of Utah for the immoral purpose of having her to live with him as his mistress and concubine and, in the agreed facts, the government proof would be that the defendant was married to one Iva Campbell in December, 1913 and since said time has continued to be her lawfully wedded husband; that subsequently, in Idaho, he became acquainted with one Mary [fol. 20] Marguerite Ford and that thereafter he secured the consent of said Ford to enter into a marriage according to the concepts of his religious belief and that thereafter he transported the said Ford to the State of Utah and continued to live with her as man and wife while still living with his legal wife.

In the foregoing, as above stated, no attempt has been made to set out in detail all the allegations of the indictments or stipulated facts to be presented by the government in the event the cases had been tried, and to which the defendants assented by their stipulation, but sufficient has been shown to outline the record before the Court for the purpose of a discussion of the legal principles involved.

I think it is clear from what has been stated that, absent the element of a religious belief in plural marriage asserted by the defendants, the evidence would be sufficient to justify the conviction and judgment of guilt as to each. It is asserted in behalf of defendants that the crimes charged do not amount to prostitution or debauchery as set forth in the Statute. The White Slave Traffic Act was passed by Congress in 1910 and, in 1916, it finally came before the United States Supreme Court for construction, in Caminetti v. United States, 242 U. S. 470. There, in several cases consolidated for hearing, it was strenuously asserted that the Act was never intended to cover cases other than those in which commercialized vice was involved but eventually, in spite of the opposition of an earnest minority of the High Court asserted in a dissenting opinion, the Court decided that, under the terms of the Act, the element of gain was not to be interpreted as a necessary element of the crimes specified by the Statute and it was held that the transportation for an immoral purpose, to-wit: that a woman should become a mistress and concubine, was within the terms of the Statute. In all the cases before the Court at the present time where the indictments are brought under this Act this relationship is specifically charged. From that day to this it has been earnestly argued that the Act does not apply to a variety of circumstances in which the purpose of commercial gain does not appear and yet the Supreme Court has never modified nor reversed its de [fol. 21] cision in this respect, nor since the first decision has the Congress proposed to vary or change the terms of the Act which in a sense means that it puts the stamp of approval by the Congress upon the construction given by the Court. It cannot be successfully asserted that if the Congress had intended to cover polygamy in furtherance of a religious belief, it would have so spoken, but on the contrary the more logical reasoning would be that if Congress intended to exempt acts committed in furtherance of religious beliefs, it would have so stated.

Likewise, as to the Kidnapping or Lindbergh Act it has been held by the Supreme Court in Gooch v. United States, 297 U. S. 124, that under the terms "ransom" or "reward" or "otherwise", the Act is not confined to cases in which ransom or reward is specifically involved but that under the term "otherwise" may be included any benefits which may accrue to the violator of the law.

So much for the construction of the indictments and what the Court conceives to be an outline of the evidence in their support under the stipulations. From this analysis the conclusion must be that unless the acts of the defendants, performed in the furtherance of a religious belief, are exempted from the operation of the Statutes, they must be held amenable to their provisions.

We turn therefore to a consideration of this element as a justification and defense of the several acts on the part of the defendants.

In addition to the copious briefs which have been offered are pamphlets, magazine articles, pictures and also complete volumes in book form, which purport to sustain the religious beliefs of the defendants and practice of polygamy in furtherance of such beliefs, for consideration by the Court. These have all been given attention, although they can scarcely be said to aid the Court in the disposition of the matters at hand. The theories in regard to the teachings of the Bible, the Book of Mormon, the Doctrines and Covenants as presented have been at least highly educational to the Court and have been accepted in the spirit in which I believe them to have been tendered. However, I cannot [fol. 22] believe the counsel have advanced them for the purpose of having the Court make a judicial declaration that the doctrine of plural marriage constitutes a "pure religion", but that they are to be considered more from the standpoint of what defendants conceive to be an interference with their religious beliefs as accorded by the Constitution. The Courts have frequently paid their respects to the practice of polygamy and in each instance, so far as I have been able to discover, it has been condemned. No instance has been cited where either the Congress or the Supreme Court have favorably spoken in regard to it. The assertion is made that on these various occasions the observation of the Court in its opinion can be considered as dicta and this Court is willing to so attribute these statements so far

as it may be permissible for the purposes of the discussion, in accordance with the contention of counsel, but there are certain statements in these opinions which must be regarded as fundamental and underlying the treatment of belief in polygamy as well as all religious beliefs in any case where it is pertinent. Some of the cases to which reference has been made are: Reynolds v. United States, 98 U. S. 145; Davis v. Beason, 133 U. S. 333; The Church v. United States, 136 U. S. 1, and United States v. Bitty, 208 U. S. 393.

The real basis of counsel's contention here that the defendants are being illegally and unjustly prosecuted is that their rights under the First Amendment to the United States Constitution have been violated. This Amendment provides "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof—", and it is undoubtedly operative as to the States under the provisions of the Fourteenth Amendment. I have no quarrel with the proposition that every person should be entitled to entertain his own individual religious beliefs but I have entertained the theory, and so expressed it in other cases involving the matter of religious beliefs, that when such beliefs lead to practices which contravene and violate the law of the land, then such beliefs must yield and be subordinated to such law for otherwise government by law would amount to chaos. This view is supported by the language of the [fol. 23] Supreme Court in Reynolds v. United States, supra, at page 166:

• • • "So here, as a law of the organization of society under the exclusive dominion of the United States, it is provided that plural marriages shall not be allowed. Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances." • • •

And this doctrine so announced has never been repudiated or changed so far as I can discover in later pronouncements of the Supreme Court but, on the other hand, it has reiterated the general principle repeatedly since that time. As late as 1943, in Murdock v. Pennsylvania, 319 U. S. 105,

the Court cites the Reynolds and Beason cases in connection with the following observation at page 109:

• • • "Moreover, we do not intimate or suggest in respecting their sincerity that any conduct can be made a religious rite and by the zeal of the practitioners swept into the First Amendment." • • •

In a Republic such as ours laws are adopted through the will of the majority by representatives of the people assembled in legislative forums. In all the States of the Union I believe, and in the State whose lines have been crossed as alleged in the indictments, there are laws enacted which prohibit polygamy or plural marriages. In this respect therefore we have no law which could be invoked here by which such marriages might be legally sustained. It follows that by logical analysis one who takes unto himself more than one wife at the same time violates such law, and any woman who purports to be other than the first and legal wife of a man falls within the classification of a mistress or concubine and if acts are practiced in connection therewith which apply to that class of individuals they fall within the scope of any Act in regard to which there is a prohibition.

It is earnestly argued that because the States have the [fol. 24] exclusive right to make laws respecting polygamy and plural marriage that every case in which that question is involved must be prosecuted exclusively in the State Courts. The answer to that argument is that when certain acts are proven to have been performed which are violative of a Federal Statute they can be prosecuted in the Federal Courts and here the indictments charge, and proof is offered to support them, that the defendants entered into practices with women as mistresses and concubines by transporting them back and forth across State lines which bring the cases at bar within the scope and purpose of the Mann Act as interpreted by the Supreme Court. This Court is in sympathy with the suggestion, personally, that it would prefer to see the cases tried in the State Courts but is not impressed with the logic of the argument, no matter how much the Court might prefer to see that method pursued. The Court is not permitted to evade a judicial responsibility on the ground of caprice or individual desire no matter how strong the inclination may be. As in the case of removals from the State Court, the Court is empowered to remand

a case and from his action in so doing there is no appeal; however this does not justify the Court to lightly pass over the matter of actually deciding judicially what the rights of the litigants may be in invoking the jurisdiction of the Federal Courts. So here, if the acts committed by the defendants fall within the inhibitions prescribed by the Federal Law, the Court is bound to take cognizance of them whether founded upon religious belief or any other form of belief on the part of the offending parties. The Court here is concerned not with religious beliefs which may be maintained freely but with overt acts which are in violation of Statute. In quoting from a preamble to an early act concerning religious freedom, Mr. Chief Justice Waite recites with approval (Reynolds v. United States, supra, at page 163) as follows:

* * * "it is declared 'that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against the peace and good order.' In these two sentences is found the true distinction between what properly belongs to the Church and what to the State." * * *

[fol. 25] Counsel raise the point that because the Mormons arrived in a country which was then under the jurisdiction of Mexico and which by subsequent treaty became a part of the United States and in the treaty the rights to religious beliefs were preserved, that they are not to be interfered with in the matter of polygamous practices. The answer to this argument is that subsequently the territory covered by the treaty was organized by Congress into a territory of the Nation and therefore became subject to the laws of Congress which should be enacted for its government. The Supreme Court in the cases cited, recognized the power of Congress to pass laws for such territorial government including the prohibition of polygamy and plural marriage. No rights along the line of religious beliefs except those guaranteed by the Constitution, were reserved or preserved under the treaty between Mexico and the United States.

The historical documents in the case at bar purport to show that polygamy was taught and practiced by the adherents of the Mormon faith for a period of at least fifty years before 1890. At that time the then President or Head of the Mormon Church issued a Manifesto to the effect that polygamy would be no longer taught or encouraged and its

adherents were enjoined to refrain from marriages forbidden by the law of the land. The Mormon Church proper, spoken of in these cases as the "dominant" Mormon Church, still maintains the attitude as expressed by its Head in 1890. There was evidently a split in the Church (which is not unusual in all classes of Churches) and the adherents of the polygamistic doctrine, calling themselves "Fundamentalists" to which the defendants purport to belong, have appeared as not only earnest advocates of polygamy but have practiced it literally. This in a way forces the Court to the unenviable situation of sitting in judgment between factions in a Church fight. It is mentioned for the reason that defendants' counsel urge that there was no authority or power of Congress to include in its Act of Admission and in the Constitution tendered by the people of Utah incident to its desire to be admitted as a State, a provision that "polygamy or plural marriages are forever prohibited." Through the Act of Admission and the Constitution tendered and approved at the time, this [fol. 26] provision became a covenant or contract between the United States and the State of Utah which legally and morally should be respected. The people of Utah, through their legal constitutional body of legisiative representatives, have kept this faith by enacting a law which carries the provision into effect. The majority of the people of Utah territory acted in behalf of all the people in adopting its constitution and its laws respecting polygamy under it. The argument therefore that the people of Utah who may still believe in and practice polygamy are not controlled by the Act of Congress and the Constitution of Utah is ingenious but specious and not convincing.

Counsel have supplied the Court with the opinion of Judge Symes in United States v. Barlow, No. 14479 Criminal (not reported) in which the Court sustained a motion to quash an indictment charging a conspiracy to violate the Act of Congress relating to the mailing of obscene, lewd or lascivious matter which was in fact literature purporting to support the religious belief in polygamy. I have no desire to interpose my views as a Judge in the matter in which this particular case has been disposed of, however I can readily see how that case may be differentiated from the cases at bar. In the first place, that part of the opinion which was adopted as a sample of what the literature so mailed really contained could scarcely be classified as

obscene, lewd or lascivious but, in the second place, the literature being in furtherance of teaching a religious belief in polygamy might fairly be considered as being not only in consonance with the First Amendment guaranteeing the freedom of religion but also that other freedom in the same Amendment forbidding the "abridging of freedom of speech or of the press." In the cases under consideration here the indictments deal with overt acts actually carried on and practiced in connection with an asserted religious belief but nevertheless contrary to the law.

What has been said with relation to the White Slave Traffic Act applies equally in principle with the application to the Kidnapping Act. While the Courts of the country are always open to the appeal of its citizens to the protection of their rights in every respect, yet it must be apparent [fol. 27] that the jurisdiction and authority of the Courts are limited to a narrow scope. It would seem more logical that the appeal for relief for those who now hold views concerning religious beliefs and practices thereunder should be made to the legislative branches of government for the adoption of laws consistent with their respective doctrines for after all, in a Republic which is at least supposed to be governed by the people themselves through representatives legally selected, the fundamental rights of the people are there vested and determined, which determination is final unless it can be said that the laws so enacted are in contravention of the Constitution, the supreme law of the land.

Apology is made for the rather inordinate length of this memorandum but the matter has seemed so important to counsel that I have felt justified in discussing it from as many angles as would seem pertinent to a conclusion upon the issues presented.

For the reasons stated, not only the motions to quash but also the motions for verdicts of not guilty and for discharge of the defendants will be overruled and denied and defendants will each and severally be adjudged to be guilty of the charges laid in the indictments. A journal entry may be made by the Clerk to that effect and further entry of an order that the defendants may remain at liberty upon their respective bonds subject to such order as the Court may make for their appearance at a time when they should appear for final judgment. This time will be determined when the Trial Judge can find it possible to again sit for this pur-

pose. In the event the defendants desire to carry their cases to the higher courts, the matter of the appropriate procedure will then be considered.

IN UNITED STATES DISTRICT COURT

MINUTE ENTRY—May 22, 1944

On this 22nd day of May, 1944, the above cases having been under advisement by Judge T. Blake Kennedy, and an opinion this day was handed down and filed denying motions to quash and motions for verdicts of not guilty and for [fol. 28] discharge of the defendants and adjudging the defendants guilty of the charges in the indictment pursuant to said opinion. It is ordered by the court that the defendants may remain at liberty upon their respective bonds subject to such order as the court may make for their appearance at a time when they should appear for final judgment.

IN UNITED STATES DISTRICT COURT

VERDICT BY THE COURT—Filed June 7, 1944

The above named defendant in open court having waived a trial by jury and having consented that said cause may be tried before this Court without a jury upon a written stipulation of facts which has heretofore been submitted to this Court, and briefs having been filed by counsel for the United States of America, and by counsel for the defendants herein, and the matter having been taken under advisement, and the Court having considered the evidence introduced by such stipulations and having also considered the briefs of counsel filed as aforesaid, and the matter having been given due consideration, now,

Therefore, I, T. Blake Kennedy, District Judge sitting within and for the District of Utah, do hereby find the Defendant Heber Kimball Cleveland, guilty as charged in the Indictment herein.

Dated: June 7, 1944.

T. Blake Kennedy, United States District Judge
Sitting within and for the District of Utah.

IN UNITED STATES DISTRICT COURT

MINUTE ENTRY—June 7, 1944

On this 7th day of June, 1944, plaintiff appearing by John S. Boyden, Assistant United States Attorney, and Defendant Cleveland appearing in person and by Claude T. Barnes, J. H. McKnight and Knox Patterson, his attorneys. The Court declared Defendant Cleveland guilty, and the following verdict was signed and filed in open court:

[The verdict appears at page 28.]

[fol. 29] The said defendant was asked if he had any reason to show why sentence should not be pronounced, and no reason being shown, the Court ordered defendant Cleveland committed to the custody of the Attorney General for imprisonment for the period of three years in an institution to be designated by the Attorney General. Judgment and Commitment signed by the Court and entered herein. The Court fixed the appeal bond in the sum of $4000.00, and ordered the bond approved by the Clerk. Defendant ordered committed to the custody of the United States Marshal until said bond was approved.

It was further ordered that a certain portion of the Court Reporter's transcript, wherein said defendants stated in open court that jury proceedings would be waived, together with all proceedings taken this day, be transcribed by the court reporter and same to be included in the record of appeal.

IN UNITED STATES DISTRICT COURT

No. 14475

UNITED STATES

v.

HEBER KIMBALL CLEVELAND

JUDGMENT AND COMMITMENT

On this 7th day of June, 1944, came the United States Attorney, and the defendant Heber Kimball Cleveland appearing in proper person, and with counsel and,

The defendant having been convicted on verdict of the Court of the offense charged in the Indictment in the above-

entitled cause, to-wit: Vio. U. S. C. Title 18, Sec. 398—Mann Act; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of—Three (3) Years.

[fol. 30] It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

T. Blake Kennedy, United States District Judge.

SUMMARY OF BOND

Bond in sum of $4,000.00, Sylvia G. Michels and Althea F. Beagley as sureties, approved by Clerk and filed June 7, 1944.

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed June 8, 1944

Heber Kimball Cleveland, 1361 So. 9th East, Salt Lake City, Utah, Appellant.

Joseph H. McKnight, Atlas Block, Salt Lake City, Utah, Claude T. Barnes, 614 First Nat'l Bank Bldg., Salt Lake City, Utah, Knox Patterson, Boston Building, Salt Lake City, Utah, Attorneys for Appellants.

Offense: Vio. Sec. 398, T. 18, U. S. C.: Mann Act.

Brief description of judgment and sentence: 3 years.

Name of prison where now confined, if not on bail: Defendant is now on bail.

I, the above named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Tenth Circuit from the judgment above mentioned on the grounds set forth below.

Heber Kimball Cleveland, Appellant.

Dated June 7th, 1944.

Grounds of Appeal:

(a) The Court erred in its failure and refusal to grant the defendant's motion to quash the information in said cause.

[fol. 31] (b) The judgment is against law and the evidence.

(c) The statute is not applicable to the facts.

(d) The judgment violates the right of the defendant to the free exercise of religious belief, under the Constitution of the United States, and the Treaty of Guadalupe Hidalgo.

(e) The facts show no intent to violate the statute; and show only an offense against state statutes.

(f) There is no proof of immorality; no proof of debauchery, lasciviousness, indecency or lewdness, or proof of any act against peace and good order, or against good morals.

Rec'd copy June 8, 1944.

John S. Boyden, Asst. U. S. Atty.

IN UNITED STATES DISTRICT COURT

FORM OF CLERK'S STATEMENT OF DOCKET ENTRIES TO BE FORWARDED UNDER RULE IV

No. 14475, Criminal

UNITED STATES OF AMERICA

vs.

HEBER KIMBALL CLEVELAND

1. Indictment for violation of Section 398, Title 18, U. S. C. A.—Mann Act—filed March 6, 1944.

2. Arraignment March 7, 1944.

3. Plea to indictment of "Not Guilty" entered on March 20, 1944.

4. Motion to withdraw plea of guilty denied —, 19—.

5. Trial by court if jury waived March 21, 1944.

6. Verdict or finding of guilt signed by the court and filed June 7, 1944.

7. Judgment—(with terms of sentence) Defendant Cleveland committed to the custody of the Attorney General for imprisonment for a period of three (3) years entered June 7, 1944.

[fol. 32] 8. Notice of appeal filed June 8, 1944.

Date June 8, 1944.

Attest W. B. Wilson, Clerk.

IN UNITED STATES DISTRICT COURT

ASSIGNMENTS OF ERROR—Filed June 21, 1944

I

The Court erred in its failure and refusal to grant the defendant's Motion to Quash the information in said causes.

II

The Court erred in its failure and refusal to find that the grand jury, finding the True Bill in said cause, was prejudiced and biased against this defendant.

III

The Court erred in finding the facts in the case, and the prosecution thereof, were applicable to Section 398, T. 18 U. S. C. A., known as the Mann Act.

IV

The Court erred in denying this defendant's constitutional rights, under the Constitution of the State of Utah, under Article 1, sections 1, 4, 7, 11, 12 and 24; Article 3, and Article 6, sub-sections 5 and 18; and likewise erred in denying this defendant's constitutional rights under the 1st, 4th, 5th, 6th, 8th and 14th amendments to the Constitution of the United States.

V

The Court erred in disregarding the defendant's rights under the Treaty of Guadalupe Hidalgo, in the free exercise of his religion.

VI

The Court erred in finding the defendant had a criminal intent in the commission of the acts charged in the information, and shown by the stipulated testimony in said cause.

VII

The Court erred in finding that this defendant violated [fol. 33] the laws of the State of Utah, in connection with Federal statutes to give rise to federal prosecution.

VIII

The Court erred in finding that the transportation of plural wives, as shown by the stipulated testimony in said cause, constituted prostitution or debauchery.

IX

The Court erred in finding that the doctrine of ejusdem generis had no application under the so-called Mann Act.

X

The Court erred in finding this defendant guilty under the charge as laid down under the stipulated testimony in the case against the plea of not guilty entered by this defendant.

XI

The Court erred in its failure and refusal to give this defendant the opportunity to file his motion for new trial as provided by the statutes and rules of this Court in such case made and provided.

XII

The Court erred in sentencing this defendant under the finding of guilty, in that the Court lost jurisdiction by reason of its failure and refusal to grant this defendant the opportunity of filing a motion for new trial in said cause, and by reason of all of the assignments herein made.

XIII

The Court erred in finding that the defendant was guilty of an overt act, under the Mann Act, after having entered the status of plural marriage.

XIV

The Court erred in failing to find that the commission of the act charged under the stipulated testimony, was the result of an honest, Christian and Biblical religious belief.

XV

(a) The Court erred in finding the defendant guilty be-
[fol. 34] cause the defendant violated a state statute, and that such violation alone constituted prostitution and debauchery.

(b) And the Court erred in this by reason of entire lack of jurisdiction under or by reason of the provisions of a state statute.

XVI

The Court erred in passing upon the morals, or the contrary, involved in a marriage relation, such being a peculiar and exclusive prerogative of State Legislators and State Courts, and the entire lack of both legislative or judicial determination by the State of Utah.

XVII

The Court erred in declaring upon the status of a marriage, stipulated to have been entered into under sincere religious belief in its validity by contracting parties; and is, and was, wholly without any jurisdiction so to adjudicate.

Claude T. Barnes, J. H. McKnight, Knox Patterson,
Attorneys for the Defendant.

Received copy of the above and foregoing Assignments of Error this 21st day of June, 1944.

Dan B. Shields, John S. Boyden, U. S. Attorney.

In United States District Court

Praecipe for Transcript of Record—Filed June 21, 1944

To the Clerk, District Court of the United States for the District of Utah in and for the Central Division:

The appellant, Heber Kimball Cleveland, hereby directs that in preparing the transcript of the record in this cause

in the District Court of the United States for the District of Utah, you include the following:

1. Indictment.

[fol. 35] 2. Stipulation of Facts.

3. Minute Entry of March 20, 1944.

4. Minute Entry of March 21, 1944.

5. Judgment Entry of June 7, 1944.

All other pleadings, minute entries and stenographic report of Case #14478 are applicable to this case.

Claude T. Barnes, J. H. McKnight, Knox Patterson, Attorneys for Defendant.

Received copy this 21st day of June, 1944.

Dan B. Shields, United States Attorney; John S. Boyden, Assistant United States Attorney.

IN UNITED STATES DISTRICT COURT

STIPULATION AND ORDER—Filed June 26, 1944

It is hereby stipulated by John S. Boyden, Assistant United States Attorney for the District of Utah, Central Division, having charge of the prosecution of the above entitled cause, and Claude T. Barnes, J. H. McKnight and Knox Patterson, attorneys for the above named defendant, that the stipulated testimony in said cause shall be and constitute the Bill of Exceptions on appeal in said cause.

Dated this 22nd day of June, 1944.

John S. Boyden, Assistant U. S. Attorney; Claude T. Barnes, J. H. McKnight, Knox Patterson.

[fol. 36] ORDER

In accordance with the foregoing stipulation, It Is Hereby Ordered that the stipulated testimony in the above entitled cause shall be and constitute the Bill of Exceptions on appeal in said cause.

Dated this 24th day of June, 1944.

T. Blake Kennedy, Judge.

IN UNITED STATES DISTRICT COURT

STIPULATION—Filed July 7, 1944

It is hereby stipulated by the parties hereto, through their respective attorneys, that the reporter's transcript of the proceedings of the above-entitled court on June 7, 1944, may be shortened by the elimination of matter pertaining to sentences and may include such portions only as are presented herewith.

Dated this 5th day of July, 1944.

Dan B. Shields, Attorney for the United States; Claude T. Barnes, J. H. McKnight, Knox Patterson, Attorneys for Defendant.

IN UNITED STATES DISTRICT COURT

PORTION OF REPORTER'S TRANSCRIPT OF PROCEEDINGS—June 7, 1944

(Reporter called in at approximately 10:15 A. M. and the following proceedings were thereupon recorded:)

The Court: The statute says motions after verdict or finding of guilt shall be made and determined promptly, but it does not say you could not file the motion after.

Mr. Barnes: The second paragraph, your Honor, about three days.

[fol. 37] The Court: After verdict or finding of guilt, shall be made within three days.

Mr. Barnes: Could be made within 60 days if on the ground of newly discovered evidence.

The Court: Yes.

Mr. Boyden: You don't contend the court would have to wait 60 days to sentence?

Mr. Barnes: We don't want the court to wait a minute. We are trying to accommodate everybody.

The Court: My point is I am here ready to sentence now. If you want to file your motion for a new trial—it says you must file them promptly—you have had two weeks. If you want to do that now you may do it and I will dispose of them at once and then sentence. If you want to defer that, I will sentence now and you can file your motion

afterwards. You can use your own judgment in respect to it.

Mr. Barnes: We are afraid we would lose jurisdiction—that is, your Honor would.

The Court: I do not see how you figure I would lose jurisdiction. Who would have jurisdiction—if you haven't filed an appeal?

Mr. Barnes: The motions would not then be filed before sentence. The moment your Honor sentences these people you lose jurisdiction, except for the purpose of assisting to determine the procedure on appeal, as to the record that goes up on appeal.

The Court: Suppose you do not appeal.

Mr. Barnes: Of course we are going to appeal.

The Court: I know you are.

Mr. Barnes: We have five days after we——

The Court: But supposing you did not appeal—the presumption that you are has nothing to do with it—can not be indulged—Suppose I sentence them now, and we assume you did not appeal, I would lose jurisdiction in what?

[fol. 38] Mr. Barnes: I think you would lose jurisdiction of the appellate matters in that respect.

The Court: I would not lose jurisdiction in the appellate matters until—if you are referring to your rule—until your notice of appeal is filed. That is what causes the court to lose jurisdiction.

Mr. Patterson: Does your Honor hold that we may file the motion for a new trial after sentence?

The Court: I am saying you will either file it before or afterwards, because I am here to sentence. I do not think there is anything in the point that the court loses jurisdiction. The thing that makes you lose jurisdiction is the proposition that you have filed your notice of appeal. From that time on the appellate court has jurisdiction, with exception of certain things that the trial court can do.

Mr. Patterson: Suppose we filed motion for a new trial after sentence—say we have the three days period that the statute allows for that purpose, and then it was more than five days after filing the motion before it was heard. Then would you say the five days appeal time expired in the meantime after sentence, or would the appeal run from the overruling of the motion for a new trial?

The Court: I think your appeal would run from the overruling of the motion.

I am going to dispose of the motions here, if you have any, today. I do not see what difference it would make. I am trying to help you all I can. I want these cases reviewed by the appellate courts, and I have indicated in my memorandum so you would be ready here.

Now, then, I intended when I came out that you would be prepared with your notice of appeal, be prepared with your bonds, you would have everything then in shape so your defendants would be released on bond, and your notice of appeal; you then have forty days, and you could get additional time to get up your record.

Mr. Barnes: We have the notice of appeal ready. We can not file that until we know what the sentence is.

[fol. 39] The Court: I will give you time to do that, as far as that is concerned. I will have to sign the sentence, anyway, under the statute.

Mr. Barnes: We can have those ready in about three hours. You were going to leave this afternoon?

The Court: I am leaving at five o'clock.

Mr. Patterson: Suppose we file the motion for a new trial by two o'clock, and then the court give us a short time to submit to the court by brief——

The Court: No, I won't do that.

Mr. Patterson: We have some particular authority—All right, suppose we submit the motion for a new trial at two o'clock. If the court doesn't want us to discuss the matter, the court will overrule the motion, then our time for appeal will start.

The Court: If you have your motions ready, file them now, if you want to file them before sentence, and I will hear you now.

Mr. Barnes: If your Honor would do that, over our objection—we want time to prepare the motion.

The Court: I assume everything I say is over your objection. You can have that in the record.

Mr. Barnes: If your Honor declines to give us time to prepare motions for new trial based on newly discovered evidence, we can submit the others now.

Mr. Boyden: The court has not said that.

Mr. Barnes: If that is your Honors ruling——

The Court: I do not understand by that rule that on the supposition that you—for instance, take it under the rule in regard to newly discovered evidence, do you suppose that

contemplates the court has to sit around sixty days before sentence is made?

Mr. Barnes: No—it would, probably, in the ordinary event; but we don't want time that way.

[fol. 40] The Court: I know—I am asking how you interpret that rule. That is ridiculous.

Mr. Barnes: It is dangerous in my view for us to make motion for new trial after sentence. I don't think the rule contemplates that.

The Court: If you ask now to present your motion on newly discovered evidence, then it indicates you knew about it and could have been prepared here.

Mr. Patterson: Just as we told the court we thought our motions would be premature, and I am sure the district attorney agreed with us, if filed prior to the finding of the court here—the formal finding of guilty.

The Court: You could have had them prepared.

Mr. Patterson: We have motions prepared, your Honor; but still, we didn't know just what course the court would take. In your decision you indicated the mechanics of it would be worked out when you arrived.

The Court: The mechanics of the sentence—mechanics of the appeal—that is what I said—the only thing I contemplated.

Mr. Patterson: The motion for a new trial is a necessary step in appeal.

The Court: No, it is not a necessary step, at all.

Mr. Patterson: We might consider it such.

Mr. Barnes: Will you Honor hold now that we must file this motion for a new trial now or you will proceed to sentence?

The Court: How soon can you have them? I am going to hear them while I am here now.

Mr. Patterson: Under compulsion, we will file them by two o'clock.

Mr. Barnes: Or we can file them right now with respect to all but——

The Court: That doesn't do any good, disposing of them piecemeal. That doesn't do any good.

[fol. 41] I certainly think, and I will rule on the proposition with regard to requiring them to be filed, if you are going to file them by two o'clock. But I will embrace in my ruling that on newly discovered evidence you are not bound to file them before sentence; that would be ridiculous.

That will give my thought, at least, to the appellate court, whether you are bound to file on newly discovered evidence before sentence.

Mr. Barnes: We will also try to have by two o'clock, your Honor, notice of appeal, so you can advise us what documents you want to go up. By two o'clock we will try to have those.

The Court: I do not advise you as to any documents—what documents?

Mr. Barnes: Your Honor has supervision over what part of the record you want to go up. That is very simple here.

The Court: No, I haven't any supervision over that, under the rules. It says you call counsel together and determine on the proposition. I will call you together now—you are together—my idea is that you should send up the complete transcript of record in this case.

Mr. Barnes: Including any exhibits—well, there weren't any exhibits—just a complete judgment roll?

The Court: It is on an agreed statement of facts. You have no transcript of testimony.

(Recess to 2 P. M.)

2:00 P. M. (After recess.)

Mr. Barnes: I would like the record to show an exception to the Court's ruling this morning.

During the noon hour we have prepared notice of appeal, and in view of your Honor's ruling we haven't had time to make motions for new trial, so the defendants are ready for sentence.

The Court: Very well.

Mr. Patterson: I would like to make a short statement for the record in regard to a matter.

[fol. 42] When the court suggested giving us until two o'clock in which to file our motions for new trial, we were disturbed somewhat as to whether or not filing a motion after sentence would toll our statute for appeal, and we feel we had better stand upon our record and ask for the three-day period which we feel we have within which to file the motions for new trial.

I guess the court disposed of that this morning.

The way we feel about it, we do not feel justified in filing them now, because of some information we haven't got that we can not incorporate the point with reference to newly discovered evidence on any motion to be filed now, so if

the court holds that we can not have the three-day period within which to file our motion for a new trial——

The Court: My answer to that is this, Mr. Patterson: that you have had over two weeks after you knew what the court's decision was, within which to prepare your motion for a new trial. And the rules say they shall be filed promptly. And therefore you should have had them ready and filed long before.

And as far as newly discovered evidence is concerned, I certainly do not believe that the rules contemplate that a court after verdict has got to wait sixty days before he passes sentence.

Mr. Patterson: I am frank to say I don't know about that. I think we are justified in construing the memorandum decision as such only, and that the court's finding here this morning is the record which shows their conviction, and we feel we are entitled to a three-day period after that time.

The Court: Whatever rights are preserved by your exception, you will have them.

Mr. Patterson: We would like an exception on that point, your Honor.

• • • • • • •

The Court: Yes. You must file your notice of appeal before——

Mr. Barnes: We have them ready now. We are serving [fol. 43] them right now. That is in order that your Honor will not be inconvenienced. After this notice of appeal is filed with the Clerk, the clerk is supposed to notify you, then you are supposed to give us instructions concerning what papers are to go up on appeal.

The Court: The rule doesn't say that. Read that rule.

Mr. Barnes (Reads): "The clerk of the trial court shall immediately notify the trial judge of the filing of the notice of appeal, and thereupon the trial judge shall at once direct the appellant or his attorney, and the United States Attorney, to appear before him, and shall give such directions as may be appropriate with respect to the preparation of the record on appeal, including directions for the purpose of making promptly available all necessary transcripts of testimony and proceedings.

The action and directions contemplated by this rule may be had and given by the trial judge at any place he may

designate within the judicial district where the conviction was had."

Now, by serving this notice of appeal now, your Honor may take that notice and then we will get such instructions now, so you can go back this afternoon.

The Court: Mr. Clerk, as soon as these are filed, notify me and I will notify counsel to meet me in Chambers at once. I don't know that there is any particular place we ought to meet. I thought inasmuch as this proceedings has been simplified so much—there is no testimony, no testimony taken in any way——

Mr. Barnes: The only thing we want is the stenographer's notes of today's proceedings. If your Honor will permit, we might stipulate with Mr. Boyden that the stenographer's notes as of today may be considered as part of the record; that is all we will want.

Mr. Patterson: Including all the other papers filed with the court.

Mr. Barnes: Surely.

The Court: Yes, it will be an entire clerk's record.

[fols. 44-46] Mr. Boyden: That doesn't mean that you want the briefs part of the record, too?

Mr. Barnes: No, no. We want these oral proceedings here today as part of this record; and then we are through.

The Court: Yes, that is right.

Mr. Barnes: Do you stipulate to that, Mr. Boyden?

Mr. Boyden: I don't think that requires a stipulation. If all the records are there, I don't want anything more than that.

Mr. Barnes: If we don't do that, we have to have a bill of exceptions settled by your Honor.

The Court: No.

Mr. Boyden: We can stipulate on that easily enough, your Honor, that is, on settlement later on. He is talking about preparing the record for printing. I can stipulate with them. I always do.

Mr. Barnes: I want this as part of the record on appeal. And then your Honor is through. You don't have anything more to do about it. You have told us now about appeal, and all that. If Mr. Boyden will stipulate that this transcript, when certified by the reporter, may be considered as part of the record, we are through right now.

Mr. Boyden: I don't have any objection to that being part of the record.

Mr. Barnes: Will your Honor make that order now?

The Court: Yes; the reporter will get out and transcribe all of today's proceedings in these cases and file it with the clerk. He is directed to file it as part of the record in these cases.

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 47] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

No. 14476 Criminal

UNITED STATES OF AMERICA, Plaintiff,

v.

HEBER KIMBALL CLEVELAND, Defendant

INDICTMENT—Filed March 6, 1944

The grand jurors for the United States of America impaneled and sworn in the District Court of the United States for the Central Division of the District of Utah at the November term of said court in the year 1943, and inquiring for said District of Utah, upon their oath present:

That heretofore, towit, on the 5th day of April, 1942, at Salt Lake City in the Central Division of the District of Utah one Heber Kimball Cleveland alias Fred Cleveland, hereinafter called defendant, unlawfully and feloniously, by means of automobile transportation, to-wit, 1936 Packard Sedan, Motor No. X33083, did knowingly transport, cause to be transported and knowingly aid and assist in obtaining transportation for and in transporting a certain woman, to-wit, Marcia Covington, from Salt Lake City in the Central Division of the District of Utah to Los Angeles in the District of California, then and there for the purpose of debauchery and for a further immoral purpose, to-wit, for the purpose of having sexual intercourse with the aforesaid woman, the said Marcia Covington, not then being the wife of defendant, and for the further immoral purpose that the aforesaid woman should be and act as his mistress and concubine; contrary to the form of the statute in such case made

[fol. 48] and provided and against the peace and dignity of the United States of America.

A True Bill:

Don Clyde, Foreman of the Grand Jury.

Dan B. Shields, United States Attorney.

[The motion to quash true bill is identical with the motion to quash in case No. 14475, which appears at page 2.]

[The minute entry of March 20, 1944, is identical with the minute entry in case No. 14475, which appears at page 7.]

[The stipulation of facts is identical with the statement of facts in case No. 14475, which appears at page 7.]

[The minute entry of March 21, 1944, is identical with the minute entry in case No. 14475, which appears at page 13.]

[The reporter's transcript March 21, 1944, is identical with the reporter's transcript in case No. 14475, which appears at page 13.]

[The motion for verdict for defendant is identical with the motion for verdict for defendant in case No. 14475, which appears at page 14.]

[The minute entry of March 22, 1944, is identical with the minute entry in case No. 14475, which appears at page 15.]

[fol. 49] [The memorandum opinion is identical with the opinion in case No. 14475, which appears at page 15.]

[The minute entry of May 22, 1944, is identical with the minute entry in case No. 14475, which appears at page 27.]

IN UNITED STATES DISTRICT COURT

VERDICT BY THE COURT—Filed June 7, 1944

The above named defendant in open court having waived a trial by jury and having consented that said cause may be tried before this Court without a jury upon a written stipulation of facts which has heretofore been submitted to this Court, and briefs having been filed by counsel for the United States of America, and by counsel for the defendant herein, and the matter having been taken under advisement, and the Court having considered the evidence introduced by such stipulations and having also considered the briefs of counsel filed as aforesaid, and the matter having been given due consideration, now,

Therefore, I, T. Blake Kennedy, District Judge sitting within and for the District of Utah, do hereby find the Defendant Heber Kimball Cleveland, guilty as charged in the Indictment herein.

Dated: June 7, 1944.

T. Blake Kennedy, United States District Judge Sitting within and for the District of Utah.

IN UNITED STATES DISTRICT COURT

MINUTE ENTRY—June 7, 1944.

On this 7th day of June, 1944, plaintiff appearing by John S. Boyden, Assistant United States Attorney, and Defendant Cleveland appearing in person and by Claude T. Barnes, J. H. McKnight, and Knox Patterson, his attorneys. The court declared Defendant Cleveland guilty, and the following verdict was signed and filed in open court:

[The verdict appears at page 49.]

[fol. 50] The said defendant was asked if he had any reason to show why sentence should not be pronounced, and no reason being shown, the court ordered Defendant Cleveland committed to the custody of the Attorney General for imprisonment for the period of three years in an institution to be designated by the Attorney General, and sentence to

run concurrently with sentence imposed in case No. 14475, Criminal. Judgment and commitment signed by the court and entered herein. The court fixed the appeal bond in the sum of $4,000.00 and ordered the bond approved by the clerk. Defendant ordered committed to the custody of the United States Marshal until said bond was approved.

It was further ordered that a certain portion of the Court Reporter's transcript, wherein said defendants stated in open court that jury proceedings would be waived, together with all proceedings taken this day, be transcribed by the court reporter and same to be included in the record of appeal.

IN UNITED STATES DISTRICT COURT

No. 14476

UNITED STATES

v.

HEBER KIMBALL CLEVELAND

JUDGMENT AND COMMITMENT

On this 7th day of June, 1944, came the United States Attorney, and the defendant Heber Kimball Cleveland appearing in proper person, and with counsel and,

The defendant having been convicted on verdict of the Court of the offense charged in the Indictment in the above-entitled cause, to-wit: Vio. Sec. 398 Title 18, U. S. C. A.—Mann Act and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of—Three [fol. 51] (3) Years and sentence to run concurrently with sentence imposed in Case No. 14475, Criminal.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

T. Blake Kennedy, United States District Judge.

SUMMARY OF BOND

Bond in the sum of $4,000, Sylvia G. Michels and Althea F. Beagley as sureties, approved by Clerk and filed June 7, 1944.

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed June 8, 1944

Heber Kimball Cleveland, 1361 So. 9th East, Salt Lake City, Utah, Appellant.

Joseph H. McKnight, Atlas Block, Salt Lake City, Utah, Claude T. Barnes, 614 First Nat'l Bank Bldg., Salt Lake City, Utah, Knox Patterson, Boston Building, Salt Lake City, Utah, Attorneys for Appellants.

Filed June 8, 1944.

Offense: Vio. Sec. 398, T. 18, U. S. C. a Mann Act.

Brief description of judgment and sentence: 3 years to run concurrently with No. 14475.

Name of prison where now confined, if not on bail: Defendant is now on bail.

I, the above named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Tenth Circuit from the judgment above mentioned on the grounds set forth below.

Heber Kimball Cleveland, Appellant.

Dated June 7th, 1944.

[fol. 52] Grounds of Appeal:

(a) The Court erred in its failure and refusal to grant the defendant's motion to quash the information in said cause.

(b) The judgment is against law and the evidence.

(c) The statute is not applicable to the facts.

(d) The judgment violates the right of the defendant to the free exercise of religious belief, under the Constitution of the United States, and the Treaty of Guadalupe Hidalgo.

(e) The facts show no intent to violate the statute; and show only an offense against state statutes.

(f) There is no proof of immorality; no proof of debauchery, lasciviousness, indecency or lewdness, or proof of any act against peace and good order, or against good morals.

Rec'd copy June 8, 1944.

John S. Boyden, Asst. U. S. Atty.

IN UNITED STATES DISTRICT COURT

FORM OF CLERK'S STATEMENT OF DOCKET ENTRIES TO BE FORWARDED UNDER RULE IV.

No. 14476, Criminal

UNITED STATES OF AMERICA

vs.

HEBER KIMBALL CLEVELAND

1. Indictment for violation of Section 398, Title 18, U. S. C. A.—Mann Act filed March 6, 1944.
2. Arraignment March 7, 1944.
3. Plea to indictment of "Not Guilty" entered on March 20, 1944.
4. Motion to withdraw plea of guilty denied —— ——, 19—.
5. Trial by court if jury waived March 21, 1944.
6. Verdict or finding of guilt signed by the Court and filed June 7, 1944.

[fols. 53-54] 7. Judgment—(with terms of sentence) Defendant committed to the custody of the Attorney General for a period of three (3) years, sentence to run concurrently with sentence imposed in Case No. 14475, Criminal entered June 7, 1944.

8. Notice of appeal filed June 8, 1944.

Date June 8, 1944.

Attest W. B. Wilson, Clerk.

[The assignments of error in case No. 14476 are identical with the assignments of error in case No. 14475, which appear at page 32.]

[The request for transcript of record is identical with the request for transcript of record in case No. 14475, which appears at page 34.]

[The stipulation and order re bill of exceptions are identical with the stipulation and order re bill of exceptions in case No. 14475, which appear at page 35.]

[The stipulation re transcript of proceedings on June 7, 1944, is identical with the stipulation re transcript of proceedings in case No. 14475, which appears at page 36.]

[The reporter's transcript of proceedings June 7, 1944, is identical with the transcript of proceedings in case No. 14475, which appears at page 36.]

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 55] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

No. 14477, Criminal

UNITED STATES OF AMERICA, Plaintiff,

v.

HEBER KIMBALL CLEVELAND, Defendant

INDICTMENT—Filed March 6, 1944

The grand jurors for the United States of America impaneled and sworn in the District Court of the United States for the Central Division of the District of Utah at the November term of said court in the year 1943, and inquiring for said District of Utah, upon their oath present:

First Count

That heretofore, to-wit, on the 9th day of August, 1942, at Salt Lake City in the Central Division of the District of Utah, one Heber Kimball Cleveland alias Fred Cleveland, hereinafter called defendant, unlawfully and feloniously, by means of automobile transportation, to-wit, 1936 Packard Sedan, Motor No. X33038, did knowingly transport, cause to be transported and knowingly aid and assist in obtaining transportation for and in transporting a certain woman, to-wit: Marie Beth Barlow, from Salt Lake City in the Central Division of the District of Utah to Grand Junction

in the District of Colorado, then and there for the purpose of debauchery and for a further immoral purpose, to-wit, that the aforesaid woman should be and become his mistress and concubine; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

[fol. 56] Second Count

And the grand jurors aforesaid, upon their oath as aforesaid, do further present:

That heretofore, to-wit, on the 12th day of October, 1942, at Salt Lake City in the Central Division of the District of Utah, one Heber Kimball Cleveland alias Fred Cleveland hereinafter called defendant, unlawfully and feloniously, by means of automobile transportation, to-wit, 1936 Packard Sedan, Motor No. X33083, did knowingly transport, cause to be transported and knowingly aid and assist in obtaining transportation for and in transporting a certain woman, to-wit, Marie Beth Barlow, from Salt Lake City in the Central Division of the District of Utah to Grand Junction in the District of Colorado, then and there for the purpose of debauchery and for a further immoral purpose, to-wit, that the aforesaid woman should be and become his mistress and concubine; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Third Count

And the grand jurors aforesaid, upon their oath as aforesaid, do further present:

That heretofore, to-wit, on the 5th day of December, 1942, at Salt Lake City in the Central Division of the District of Utah, one, Heber Kimball Cleveland, alias Fred Cleveland, hereinafter called defendant, unlawfully and feloniously, by means of automobile transportation, to-wit, Denver & Rio Grande train, did knowingly transport, cause to be transported and knowingly aid and assist in obtaining transportation for and in transporting a certain woman, to-wit, Kathryn Lucy Collinwood, from Salt Lake City in the Central Division of the District of Utah to Grand Junction in the District of Wyoming, then and there for the purpose of debauchery and for a further immoral purpose, to-wit, that

the aforesaid woman should be and become his mistress and [fol. 57] concubine; contrary to the statute in such case made and provided and against the peace and dignity of the United States of America.

A True Bill:

Don Clyde, Foreman of the Grand Jury.

Dan B. Shields, United States Attorney.

[The motion to quash true bill is identical with the motion to quash in case No. 14475, which appears at page 2.]

[The minute entry of March 20, 1944, is identical with the minute entry in case No. 14475, which appears at page 7.]

[The stipulation of facts is identical with the statement of facts in case No. 14475, which appears at page 7.]

[The minute entry of March 21, 1944, is identical with the minute entry in case No. 14475, which appears at page 13.]

[The reporter's transcript March 21, 1944, is identical with the reporter's transcript in case No. 14475, which appears at page 13.]

[The motion for verdict for defendant is identical with the motion for verdict for defendant in case No. 14475, which appears at page 14.]

[fol. 58] [The minute entry of March 22, 1944, is identical with the minute entry in case No. 14475, which appears at page 15.]

[The memorandum opinion is identical with the memorandum opinion in case No. 14475, which appears at page 15.]

[The minute entry of May 22, 1944, is identical with the minute entry in case No. 14475, which appears at page 27.]

IN UNITED STATES DISTRICT COURT

VERDICT BY THE COURT—Filed June 7, 1944

The above named defendant in open court having waived a trial by jury and having consented that said cause may be tried before this Court without a jury upon a written stipulation of facts which has heretofore been submitted to this Court, and briefs having been filed by counsel for the United States of America, and by counsel for the defendant herein, and the matter having been taken under advisement, and the Court having considered the evidence introduced by such stipulations and having also considered the briefs of counsel filed as aforesaid, and the matter having been given due consideration, now,

Therefore, I, T. Blake Kennedy, District Judge sitting within and for the District of Utah, do hereby find the Defendant Heber Kimball Cleveland, guilty on Count One, guilty on Count Two, and guilty on Count Three, as charged in the Indictment herein.

Dated: June 7, 1944.

T. Blake Kennedy, United States District Judge
Sitting within and for the District of Utah.

[fol. 59] IN UNITED STATES DISTRICT COURT

MINUTE ENTRY—June 7, 1944

On this 7th day of June, 1944, plaintiff appearing by John S. Boyden, Assistant United States Attorney, and Defendant Cleveland appearing in person and by Claude T. Barnes, J. H. McKnight, and Knox Patterson, his at-

torneys. The Court declared Defendant Cleveland guilty and the following verdict was signed and filed in open court:

[The verdict appears at page 58.]

The said defendant was asked if he had any reason to show why sentence should not be pronounced, and no reason being shown, the court ordered Defendant Cleveland committed to the custody of the Attorney General for imprisonment in an institution to be designated by the Attorney General for a period of one year and one day on each of the three counts, sentence to run concurrently as to counts, and sentence to run consecutively to the one imposed in case No. 14475 and 14476, Criminal. Judgment and commitment signed by the court and entered herein. The court fixed the appeal bond in the sum of $4000.00, and ordered the bond approved by the clerk. Defendant ordered committed to the custody of the United States Marshal until said bond was approved.

It was further ordered that a certain portion of the court reporter's transcript, wherein said defendant stated in open court that jury proceedings would be waived, together with all proceedings taken this day, be transcribed by the court reporter and same to be included in the record of appeal.

IN UNITED STATES DISTRICT COURT

No. 14477

UNITED STATES

v.

HEBER KIMBALL CLEVELAND

JUDGMENT AND COMMITMENT

On this 7th day of June, 1944, came the United States Attorney, and the defendant Heber Kimball Cleveland appearing in proper person, and with counsel and,

The defendant having been convicted on verdict of the Court of the offense charged in the Indictment in the above-entitled cause, to-wit:

[fol. 60] Vio. U. S. C. Title 18, Sec. 398—Mann Act

and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of

—One (1) year and One (1) day on each of the three counts, sentence to run concurrently as to counts, and sentence to run consecutively to the one imposed in Case No. 14475, and 14476, Criminal—

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

T. Blake Kennedy, United States District Judge.

Summary of Bond

Bond in sum of $4,000.00, Sylvia G. Michels and Althea F. Beagley as sureties, approved by Clerk and filed June 7, 1944.

In United States District Court

Notice of Appeal—Filed June 8, 1944

Heber Kimball Cleveland, 1361 So. 9th East, Salt Lake City, Utah, Appellant.

Joseph H. McKnight, Atlas Block, Salt Lake City, Utah, Claude T. Barnes, 614 First Nat'l Bank Bldg., Salt Lake City, Utah, Knox Patterson, Boston Building, Salt Lake City, Utah, Attorneys for Appellants.

Offense: Vio. Sec. 398, T. 18, U. S. C.: Mann Act Brief description of judgment and sentence:

[fol. 61] One (1) year and One (1) day on each of the three counts, sentence to run concurrently as to counts, and sen-

tence to run consecutively to the one imposed in Case Nos. 14475 and 14476, Criminal

Name of prison where now confined, if not on bail:

Defendant is Now on Bail

I, the above named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Tenth Circuit from the judgment above mentioned on the grounds set forth below.

Heber Kimball Cleveland, Appellant.

Dated June 7th, 1944.

(a) The Court erred in its failure and refusal to grant the defendant's motion to quash the information in said cause.

(b) The judgment is against law and the evidence.

(c) The statute is not applicable to the facts.

(d) The judgment violates the right of the defendant to the free exercise of religious belief, under the Constitution of the United States, and the Treaty of Guadalupe Hidalgo.

(e) The facts show no intent to violate the statutes; and show only an offense against state statutes.

(f) There is no proof of immorality; no proof of debauchery, lasciviousness, indecency or lewdness, or proof of any act against peace and good order, or against good morals.

Rec'd copy June 8, 1944.

John S. Boyden, Asst. U. S. Atty.

[fol. 62] IN UNITED STATES DISTRICT COURT

No. 14477, Criminal

UNITED STATES OF AMERICA

vs.

HEBER KIMBALL CLEVELAND

FORM OF CLERK'S STATEMENT OF DOCKET ENTRIES TO BE FORWARDED UNDER RULE IV

1. Indictment for violation of Section 398, Title 18, U. S. C. A.—Mann Act (3 Counts) filed March 6, 1944.

2. Arraignment March 7, 1944.

3. Plea to indictment of "Not Guilty" entered on March 20, 1944.

4. Motion to withdraw plea of guilty denied —, 19—.

5. Trial by court if jury waived March 21, 1944.

6. Verdict or finding of guilt signed by the Court and filed June 7, 1944.

7. Judgment—(with terms of sentence) Defendant committed to the custody of the Attorney General for a period of one (1) year and one (1) day on each of the three counts, sentence to run concurrently as to counts, and sentence to run consecutively to the one imposed in Case No. 14475 and 14476 entered June 7, 1944.

8. Notice of appeal filed June 8, 1944.

Date June 8, 1944.

Attest W. B. Wilson, Clerk.

[The assignments of error are identical with the assignments of error in case No. 14475, which appear at page 32.]

[The request for transcript of record is identical with the request for transcript of record in case No. 14475, which appears at page 34.]

[fols. 63-64] [The stipulation and order re bill of exceptions are identical with the stipulation and order re bill of exceptions in case No. 14475, which appear at page 35.]

[The stipulation re transcript of proceedings on June 7, 1944, is identical with the stipulation re transcript of proceedings in case No. 14475, which appears at page 36.]

[The reporter's transcript of proceedings June 7, 1944, is identical with the transcript of proceedings in case No. 14475, which appears at page 36.]

* * * * * * *

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 65] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

* * * * * * *

No. 14478 Criminal

UNITED STATES OF AMERICA, Plaintiff

v.

DAVID BRIGHAM DARGER, Defendant

INDICTMENT—Filed March 6, 1944

The grand jurors for the United States of America impaneled and sworn in the District Court of the United States for the Central Division of the District of Utah at the November term of said court in the year 1943, and inquiring for said District of Utah, upon their oath present:

That heretofore, to-wit, on or about the 17th day of July, 1942, at Salt Lake City in the Central Division of the District of Utah, one David Brigham Darger hereinafter called defendant, unlawfully and feloniously, by means of automobile transportation, to-wit, 1940 Willys Sedan, Motor

Number 42050, did knowingly transport, cause to be transported and knowingly aid and assist in obtaining transportation for and in transporting a certain woman, to-wit, Jean Barlow, from Grand Junction, Colorado, to Salt Lake City in the Central Division of the District of Utah, then and there for the immoral purpose that the aforesaid woman should be and live with him as his mistress and concubine; contrary to the form of the statute in such case made [fol. 66] and provided and against the peace and dignity of the United States of America.

A True Bill:

Don Clyde, Foreman of the Grand Jury. Dan B. Shields, United States Attorney.

IN UNITED STATES DISTRICT COURT

MINUTE ENTRY—March 20, 1944

On this 20th day of March, 1944, plaintiff appearing by John S. Boyden, Assistant United States Attorney, and defendant in person, and by Claude T. Barnes, Knox Patterson and J. H. McKnight, his attorneys, Defendant Darger was arraigned, gave his true name as charged, waived reading to him of the indictment, and entered his plea of not guilty. Case ordered continued until March 21st, for further proceedings.

IN THE UNITED STATES DISTRICT COURT

MINUTE ENTRY—March 21, 1944

On this 21st day of March, 1944, come again said parties by their respective attorneys as aforesaid, and Defendant Darger in person, and said defendant consented that case might be tried on stipulation of facts and jury expressly waived. Ordered that further hearing be continued until March 22, 1944.

IN THE UNITED STATES DISTRICT COURT

PORTION OF REPORTER'S TRANSCRIPT—March 21, 1944

Mr. Boyden: David Brigham Darger.

Mr. Darger, you are the defendant in case No. 14,478?

Mr. Darger: I think so.

Mr. Boyden: And is it agreeable with you that your case might be submitted on the stipulation that is entered into by counsel for you?

Mr. Darger: Yes, sir.

[fol. 67] Mr. Boyden: And do you hereby expressly waive a jury and consent that the court might try the case on that stipulation of facts?

Mr. Darger: Yes, sir.

Certificate

I hereby certify that the within pages numbered from 1 to 3, inclusive, contain a true and correct transcript of my shorthand notes of the within proceedings had in said case on March 21, 1944.

E. M. Garnett, Official Reporter.

Filed June 16, 1944.

In the United States District Court

Stipulation of Facts—Filed March 21, 1944

Come now parties in the above entitled action, United States of America by Dan B. Shields, United States Attorney, and John S. Boyden, Assistant United States Attorney, the defendant David Brigham Darger by J. H. McKnight, Claude T. Barnes, and Knox Patterson, Attorneys-at-law, and stipulate that the above entitled cases may be tried before the Court sitting without a jury upon the following statement of testimony, which would, were it not for this stipulation, be introduced by the government.

That David Brigham Darger was married to Aldora McDaniel on May 13, 1926, at Salt Lake City, Utah, and that he remained her lawful wedded husband until the granting of his divorce at Las Vegas, Nevada, on the 16th day of April, 1943.

That during the month of July, 1942, the defendant had two plural wives, in addition to his lawful wife, with whom he had gone through a religious ceremony known in the religious cult of Fundamentalists as plural or celestial marriage, and which the said defendant claimed to be based upon the original concepts of the Mormon Church.

That plural marriages were unlawful under the laws of the states of Utah and Colorado.

That for some time prior to July 17, 1942, the defendant [fol. 68] had been working as a contractor in Grand Junc-

tion, Colorado, and living there as man and wife with Jean Barlow, one of his plural wives.

That on said 17th day of July, 1942, defendant, with said Jean Barlow, went to the home of Heber Kimball Cleveland in said Grand Junction, and in the presence of Cathryn Lucy Collinwood defendant discussed plural marriage with said Herber Kimball Cleveland, at which time the said Cleveland promised the defendant that he should have the six-day-old female baby of Cleveland as his plural wife when said baby reached fourteen years of age.

That on said 17th day of July, 1942, said David Brigham Darger transported said Jean Barlow by automobile transportation from Grand Junction, Colorado, to Salt Lake City, Utah, where he lived with Jean Barlow, Beth McDaniel and Aldora McDaniel in a state of plural marriage.

Thereafter the defendant returned to Grand Junction for a short time on contract work before returning to Salt Lake to again resume living with said three women.

On December 2, 1942, at Salt Lake City, defendant wrote to Heber Kimball Cleveland, referring to the baby he had been promised in marriage, as follows:

"I drop in often to see them, and Angel blue eyes, she loves me and lets me know it. And I do love her! She is a very great joy to look forward to having some day."

Dan B. Shields, United States Attorney. John S. Boyden, Assistant United States Attorney. Claude T. Barnes, J. H. McKnight, Knox Patterson, Attorneys for defendant.

Dated this 21st day of March, 1944.

[fol. 69] IN UNITED STATE DISTRICT COURT

MOTION TO QUASH TRUE BILL—Filed March 22, 1944

Comes now the defendant, David Brigham Darger, by his counsel and respectfully moves the court to quash each and every count of the alleged True Bill in the above entitled matter, for the reasons and upon the grounds:

I

That said True Bill does not state an offense against the laws of the United States, and in particular does not state an offence under Section 398-T 18 USCA Mann Act.

II

That the court is without jurisdiction to try the alleged charge set forth in said alleged True Bill.

III

That the formation and composition of the grand jury which presented the alleged True Bill to this court was and is illegal and void; that the grand jury finding said alleged True Bill, and each member thereof, by reason of bias and prejudice had against this defendant at the time of convening and finding said alleged True Bill, was disqualified under the laws of the United States and of the State of Utah, to sit as grand jurors in this matter, and by reason thereof the substantial rights of this defendant have been impaired and he cannot safely go to trial under said alleged True Bill, and the defendant respectfully requests the court to open up the proceedings of said grand jury for inspection and investigation and to permit such further proceedings as may be justified in support of this assignment.

This assignment is supported by the challenge to the grand jury and statement of facts contained therein, a copy of which is hereto attached and made a part of this Motion to Quash.

J. H. McKnight, Knox Patterson, Attorneys for Defendant.

[fol. 70] Certificate of Merit

We, the undersigned, attorneys for the defendant above named, hereby certify that in our opinion the foregoing Motion to Quash True Bill is meritorious and that the same is not filed for the purpose of delaying any proceedings. Dated this 21 day of March, 1944.

J. H. McKnight, Knox Patterson, Attorneys for Defendant.

Challenge to Grand Jury Panel

Challenge to Don Clyde, Foreman of the Grand Jury in particular, the only member of the grand jury to these movants known by name or identity, and to the panel of the Grand Jury generally.

Comes now each of the defendants in the several cases numbered above, and in each of said criminal causes and

severally in each case by the defendants therein named, makes challenge to the grand jury which brought the True Bill forming the foundation for the criminal actions above numbered; said challenge being to the grand jury and the entire panel thereof whose names, other than the name of Don Clyde, the foreman of said jury, are unknown to said defendants or any of them, and particularly and specifically makes challenge to said named foreman of said grand jury, Don Clyde.

For grounds of said challenge and challenges and each of the same, both as to said particularly named juror and as to the panel as a whole, these defendants in said respective above numbered actions will rely upon the files and the records, the minutes of the above entitled court, the files and the records of the grand jury aforesaid and the laws of the United States of America applying and the laws of the State of Utah having application, and the minutes of the above entitled court and the following statement of facts and the affidavits hereto attached, viz:

[fol. 71] Statement of Facts

Don Clyde, the grand juror who signed each one and all of the True Bills upon which the above numbered criminal actions are based, is not and was not at any time from the commencement to the termination of the convening of said grand jury in which said True Bills were returned, an eligible juror as provided by law in the following particulars, to-wit:

Said Don Clyde at all said times and for a long time prior thereto has been and was an active member of the dominant church and a member of the high priesthood quorums thereof, and in particular the First Councillor to the said President of the Wasatch Stake of Zion of said dominant Mormon church, in which said dominant Mormon Church a state of Zion corresponds in large degree to a Roman Catholic Diocese and in which the said Presidency, headed by the said President, supplemented and assisted and in cooperation with and by a first and a second councillor, make up and constitute the supreme governing body of such stake, and as such is subject only to higher and general authorities of said church for complete control of the teachings and exposition of the doctrines of said dominant church within said stake or diocese.

These defendants verily believe and so state that said Don Clyde has occupied a dominant presiding position among the high priest quorums of said dominant Mormon Church for a period of approximately twenty years, and as such is required by his duties, in said dominant church to be in attendance personally at all the general semi-annual conferences of said church and general convocations of the leading priesthood quorums of said church held semi-annually each year over said twenty years and so these defendants allege on their information and belief that the said Don Clyde was personally in attendance at that certain session of the semi-annual conference of said dominant Mormon Church held at Salt Lake City in the month of April, A. D., 1931, at which the following resolution was adopted by unanimous vote of all the persons in attendance thereat, and the vote of the priesthood and priesthood quorums of said church being particularly noted as being [fol. 72] the first whose hands were raised in support of said resolution. A copy of said resolution so voted for and adopted at said conference is hereinafter set forth viz.:

"We have been, however, and we are entirely willing And Anxious, Too, that such offenders against the law of the State (those living in plural marriage) should be dealt with and punished as the law provides. We have been and we are willing to give such Legal Assistance as we legitimately can in the Criminal Prosecution of such cases. We are willing to go to such limits not only because we regard it as our duty as citizens of the country to assist in the enforcement of the law and the suppression of pretended "plural marriages," but also because we wish to do everything humanly possible to make our attitude toward this matter so clear, definite and unequivocal as to leave no possible doubt of it in the mind of any person. * * * I would like all those in this congregation who feel to sustain this statement that I have read to you to manifest it as the Apostles and All of the General Authorities have done, by raising their right hands."

(The Congregation responded by raising their hands.)

"I have never seen such a lot of hands held so high in my life.

"All those who are opposed to this statement will please raise their hands.

(No hand was raised.)

"Our enemies (those believing in the principle of celestial or plural marriage) do not seem to be here."

(Brackets ours.)

These defendants further allege on their information and belief that if said Don Clyde in fact was not in personal attendance and did not so personally vote to adopt said resolution aforesaid, that he, by reason of his priestly office and his adherence to the doctrines, hearings and resolutions of said dominant church nevertheless has adopted and made such resolution a part of his personal religion and belief, and is bound thereby and under the same is and has been at all of the times herein mentioned, in religious attitude [fol. 73] bound to act against all persons charged with any violation in teaching or in belief or in practice, one or the other or all, of the Mormon dominant church revealed doctrine of celestial marriage.

These defendants allege that as a matter of practice in said dominant church, at all of the times herein mentioned and since the year 1931, any member of a high priesthood quorum of said dominant church opposed to or opposing, or failing to accept and wholeheartedly embrace and be bound by said resolution in his private and public acts, if the same became known to the authorities of said church, has been relieved of his office in such priestly quorum.

That each one of the defendants in the above numbered criminal actions in this court, by reason of their belief in and open advocation of the doctrine of celestial marriage, as originally revealed to the Prophet Joseph Smith, the founder of said dominant Mormon Church, in the same manner and in the same voice as it is recorded in 22d Chapter of the Acts of the Apostles that St. Paul was instructed, not as the word of man or as any resolution adopted by any convocation of the membership or the priesthood of said dominant church or any church, or any convocation of the original twelve Apostles; and by reason of their open advocation of the said revealed word of God on the subject of polygamy so had as aforesaid, and believing and teaching the same, and by reason of said resolution hereinabove set forth

as annunciative of the present tenet and belief and requirement of belief of the members of the dominant church, and a violation of said resolution, each and all of these defendants has been excommunicated from said dominant church.

By reason of the facts aforesaid, these defendants justly and properly believe and so allege that said Don Clyde, foreman of said grand jury, could not divorce himself from his belief and religious convictions and is bounden as his duty to persecute and prosecute and bring to trial any person charged by one or more of his brother priests with expounding, teaching or in any manner believing in or advocating the doctrine of polygamy, and so in his deliberations as such grand juror was inherently and continuously and oppres- [fol. 74] sively biased as against each of these defendants and that said bias and prejudice entered into his actions as a grand juror in each of the above numbered cases,

As to the balance of the men or women constituting said grand jury and each of the same, not one of these defendants has any knowledge as to identity, name or occupation, but each of the same having been drawn from within the State of Utah, these defendants allege that in all probability, as they verily believe, many if not in fact each one of the other grand jurors making up and constituting said grand jury are now and for more than twenty years have been continuously and were at the time of their sitting on such grand jury active members of said dominant church entirely conversant with the resolution of the April, 1931, conference aforesaid and bound thereby as was and is said Don Clyde as aforesaid; believe therein and their actions as such grand jurors were influenced and controlled thereby to the bias and prejudice both actual and implied of these defendants and each of them, and so these defendants allege, on information and belief, that as to each of the True Bills in each one of the above numbered criminal actions mentioned, not only Don Clyde, but all or nearly all of the members of said grand jury were biased in like manner and in complete degree as was the grand juror, Don Clyde, and that said bias and prejudice in the deliberations of said grand jury inured to the prejudice and damage of these charged defendants and was in violation of their lawful right to have their matters, as nearly as may be and the charges of the same, considered by an impartial, fair-minded grand jury.

These defendants allege, upon their complete belief, owing largely to the adoption of the resolution hereinabove set

forth, that each one and all of the purported facts laid before said grand jury for its deliberation, and all testimony and documentary evidence supplied and given to said grand jury in each of these matters, was so supplied and given to said grand jury in every instance by members of the dominant Mormon church, either by its priesthood or its devout laity, whose testimony under oath would be received by each one and all of the said grand jurors as the absolute truth [fol. 75] and completely unimpeachable and binding upon said grand jurors without any detailed or particular investigation or questioning thereof or as to the same, its sources or imports, and so these defendants allege that said grand jury session was not and could not in its nature be such an inquiry by a proper and impartial grand jury as is contemplated by law, but was in truth and in fact an inquisition designed and intended and instituted to humiliate, harass, destroy and punish each one of these defendants by reason of his religious differences in dogma and belief with said grand jurors and said witnesses as to the fundamental, revealed doctrine of the Mormon Church as to celestial marriage, and so to destroy them utterly and prevent any further activity on their part.

Wherefore these defendants respectfully pray the court that an order of this court issue authorizing and directing these defendants, through their counsel, to thoroughly investigate the records of the grand jury and to introduce evidence of the matters in the foregoing statement of facts set forth and take such other and further proceedings as seems meet in the premises; that defendants further pray that, in the event no denial be filed to the charges made in this challenge, that the court record the same as true and immediately enter its order quashing each one and all of said True Bills.

Claude T. Barnes, J. H. McKnight, Knox Patterson,
Attorneys for Defendants.

STATE OF UTAH,
County of Salt Lake, ss:

William E. Chatwin, Charles F. Zitting, Edna Christensen, David Brigham Darger, Follis Gardner Petty, Vergel Y. Jessop, Theral Dockstader, L. R. Stubbs, each for himself being first duly sworn, deposes and says: That he is one of the defendants named in the foregoing challenge and state-

ment of fact; that he has read the same and knows the contents thereof and that the same is true of his own knowledge [fol. 76] except as to matters therein stated on information and belief and as to all such things he believes it to be true.

William E. Chatwin, Charles F. Zitting, Edna Christensen, David Brigham Darger, Follis G. Petty, Vergel Y. Jessop.

Subscribed and sworn to before me this 21 day of March, 1944. Knox Patterson, Notary Public. Residing in Salt Lake City, Utah. My commission expires: 5/19/47.

CERTIFICATE OF MERIT

We, the undersigned, attorneys for the defendants above named, hereby certify that in our opinion the foregoing Challenge and Statement of Facts is meritorious and that the same is not filed for the purpose of delaying any proceedings.

Dated this 21 day of March, 1944.

Claude T. Barnes, J. H. McKnight, Knox Patterson, Attorneys for Defendants.

Filed March 22, 1944.

[The motion for verdict for defendant is identical with the motion for verdict for defendant in case No. 14475, which appears at page 14.]

IN UNITED STATES DISTRICT COURT

MINUTE ENTRY—March 22, 1944

On this 22nd day of March, 1944, come again said parties by their respective attorneys as aforesaid, and further hearing on this case was resumed. The court heard the arguments of counsel on defendant's motion to quash the indictment, and motion for verdict for defendant, and the motion to quash the indictment was overruled by the court, and ruling on motion for verdict was held in abeyance un- [fol. 77] til briefs are received by the court. Defendant granted until April 12th to submit its brief, and plaintiff until May 3rd and reply brief of defendant to be submitted

May 8th. All briefs to be lodged with the clerk and the clerk to forward same to Judge T. Blake Kennedy at Cheyenne, Wyoming, at which time the case will be taken under advisement.

[The memorandum opinion is identical with the memorandum opinion in case No. 14475, which appears at page 15.]

[The minute entry of May 22, 1944, is identical with the minute entry in case No. 14475, which appears at page 27.]

IN UNITED STATES DISTRICT COURT

VERDICT BY THE COURT—Filed June 7, 1944

The above named defendant in open court having waived a trial by jury and having consented that said cause may be tried before this Court without a jury upon a written stipulation of facts which has heretofore been submitted to this Court, and briefs having been filed by counsel for the United States of America, and by counsel for the defendant herein, and the matter having been taken under advisement, and the Court having considered the evidence introduced by such stipulations and having also considered the briefs of counsel filed as aforesaid, and the matter having been given due consideration, now,

Therefore, I, T. Blake Kennedy, District Judge sitting within and for the District of Utah, do hereby find the defendant David Brigham Darger, guilty as charged in the Indictment herein.

Dated: June 7, 1944.

T. Blake Kennedy, United States District Judge Sitting within and for the District of Utah.

[fol. 78] IN UNITED STATES DISTRICT COURT

MINUTE ENTRY—June 7, 1944

On this 7th day of June, 1944, plaintiff appearing by John S. Boyden, Assistant United States Attorney, and Defendant Darger appearing in person and by Claude T.

Barnes, J. H. McKnight and Knox Patterson, his attorneys. The Court declared Defendant Darger guilty, and the following verdict was signed and filed in open court:

[The verdict appears at page 77.]

The said defendant was asked if he had any reason to show why sentence should not be pronounced, and no reason being shown, the Court ordered Defendant Darger committed to the custody of the Attorney General for imprisonment for the period of three years in an institution to be so designated by the Attorney General. Judgment and Commitment signed by the Court and entered herein. The Court fixed the appeal bond in the sum of $3000.00, and ordered the bond approved by the Clerk. Defendant ordered committed to the custody of the United States Marshal until said bond was approved.

It was further ordered that a certain portion of the court reporter's transcript, wherein said defendant stated in open court that jury proceedings would be waived, together with all proceedings taken this day, be transcribed by the court reporter and same to be included in the record of appeal.

IN UNITED STATES DISTRICT COURT

JUDGMENT AND COMMITMENT

On this 7th day of June, 1944, came the United States Attorney, and the defendant David Brigham Darger appearing in proper person, and with counsel and,

The defendant having been convicted on verdict of the Court of the offense charged in the indictment in the above-entitled cause, to-wit:

Vio. U. S. C. Title 18, Sec. 398—Mann Act

and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against , and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

[fol. 79] Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of Three (3) Years.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

T. Blake Kennedy, United States District Judge.

SUMMARY OF BOND ON APPEAL

Bond in sum of $3,000.00, Pansy Darger and Celeste R. Darger as sureties, approved by Clerk and filed June 7, 1944.

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed June 8, 1944

David Brigham Darger, 3744 South 9th East, Salt Lake City, Utah, Appellant.

Joseph H. McKnight, Atlas Block, Salt Lake City, Utah, Claude T. Barnes, 614 First Nat'l Bank Bldg., Salt Lake City, Utah, Knox Patterson, Boston Building, Salt Lake City, Utah, Attorneys for Appellant.

Offense: Vio. Sec. 398, T. 18, U. S. C.: Mann Act.

Brief description of judgment or sentence: Three years.

Name of Prison where now confined, if not on bail: Defendant is now on bail.

I, the above named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Tenth Circuit from the judgment above mentioned on the grounds set forth below.

David B. Darger, Appellant.

Dated June 7th, 1944.

[fol. 80] Grounds of Appeal:

(a) The Court erred in its failure and refusal to grant the defendant's motion to quash the information in said cause.

(b) The judgment is against law and the evidence.

(c) The statute is not applicable to the facts.

(d) The judgment violates the right of the defendant to the free exercise of religious belief, under the Constitution of the United States, and the Treaty of Guadalupe Hidalgo.

(e) The facts show no intent to violate the statute; and show only an offense against state statutes.

(f) There is no proof of immorality; no proof of debauchery, lasciviousness, indecency or lewdness, or proof of any act against peace and good order, or against good morals.

Rec'd copy June 7, 1944.

John S. Boyden, Asst. U. S. Atty.

In United States District Court

Form of Clerk's Statement of Docket Entries to Be Forwarded under Rule IV

No. 14478, Criminal

United States of America

vs.

David Brigham Darger

1. Indictment for violation of Section 398, Title 18, U. S. C. A.—Mann Act filed March 6, 1944.

2. Arraignment March 7, 1944.

3. Plea to indictment of 'Not Guilty' entered on March 20, 1944.

4. Motion to withdraw plea of guilty denied —, 19—.

5. Trial by court if jury waived March 21, 1944.

6. Verdict or finding of guilt signed by the Court and filed June 7, 1944.

7. Judgment—(with terms of sentence) Defendant com-
[fol. 81] mitted to the custody of the Attorney General for imprisonment for a period of three (3) years entered June 7, 1944.

8. Notice of appeal filed June 8, 1944.

Dated June 8, 1944.

Attest W. B. Wilson, Clerk.

[The assignments of error are identical with the assignments of error in case No. 14475, which appear at page 32.]

In United States District Court

Praecipe for Transcript of Record—Filed June 21, 1944

To the Clerk, District Court of the United States for the District of Utah in and for the Central Division:

The appellant, David Brigham Darger, hereby directs that in preparing the transcript of the record in this cause in the District Court of the United States for the District of Utah, you include the following:

1. Indictment.
2. Stipulation of Facts.
3. Minute Entry of March 20, 1944.
4. Minute Entry of March 21, 1944.
5. Challenge of Defendant of Grand Jury Panel.
6. Motion to Quash.
7. Motion for Verdict for Defendant.
8. Minute Entry of March 22, 1944.
9. Memorandum Opinion.
10. Judgment of Guilty.
11. Judgment Entry of June 7, 1944.
12. Reporter's Transcript of Proceedings of June 7, 1944.
13. Notice of Appeal.

[fols. 82-84] 14. Clerk's Statement of Docket.

15. Statement of Clerk that Defendant on Bond.
16. Assignment of Errors.
17. Copy of this Praecipe.

Claude T. Barnes, J. H. McKnight, Knox Patterson, Attorneys for Defendant.

Received copy this 21st day of June, 1944.

Dan B. Shields, United States Attorney; John S. Boyden, Assistant United States Attorney.

[The stipulation and order re bill of exceptions are identical with the stipulation and order re bill of exceptions in case No. 14475, which appear at page 35.]

[The stipulation re transcript of proceedings on June 7, 1944, is identical with the stipulation re transcript of proceedings in case No. 14475, which appears at page 36.]

[The reporter's transcript of proceedings June 7, 1944, is identical with the transcript of proceedings in case No. 14475, which appears at page 36.]

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 85] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

No. 14480, Criminal

UNITED STATES OF AMERICA, Plaintiff,

v.

VERGEL Y. JESSOP, Defendant

INDICTMENT—Filed March 6, 1944

The grand jurors for the United States of America impaneled and sworn in the District Court of the United States for the Central Division of the District of Utah at the November term of said court in the year 1943, and inquiring for said District of Utah, upon their oath present:

That heretofore, to-wit, on the 10th day of July, 1943, at Short Creek in the Central Division of the District of Utah, one Vergel Y. Jessop, hereinafter called Defendant, unlawfully and feloniously, by means of automobile transportation, to-wit, 1936 Chevrolet Pickup Truck, Motor No. K6621218, did knowingly transport, cause to be transported, and knowingly aid and assist in obtaining transportation for and in transporting a certain woman, to-wit, Mae Johnson, from Short Creek in the Central Division of the District of Utah, to Short Creek in the District of Arizona, then and there for the purpose of debauchery and for a further immoral purpose, to-wit, that the aforesaid woman should be and become his mistress and concubine; contrary [fol. 86] to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

A True Bill.

Don Clyde, Foreman of the Grand Jury.

Dan B. Shields, United States Attorney.

IN UNITED STATES DISTRICT COURT

MINUTE ENTRY—March 20, 1944

On this 20th day of March, 1944, plaintiff appearing by John S. Boyden, Assistant United States Attorney, and defendant in person, and by Claude T. Barnes, Knox Patterson and J. H. McKnight, his attorneys. Defendant Jessop was arraigned, gave his true name as charged, waived reading to him of the indictment and entered his plea of not guilty. Case ordered continued until March 21st for further proceedings.

IN UNITED STATES DISTRICT COURT

MINUTE ENTRY—March 21st, 1944

On this 21st day of March, 1944, come again said parties by their respective attorneys as aforesaid, and Defendant Jessop in person, and said defendant consented that case might be tried on stipulation of facts and jury expressly waived. Ordered that further hearing be continued until March 22, 1944.

IN UNITED STATES DISTRICT COURT

PORTION OF REPORTER'S TRANSCRIPT—March 21, 1944

Mr. Boyden: Vergel Y. Jessop.

Mr. Jessop, you are the defendant in Case No. 14480?

Mr. Jessop: Yes, sir.

Mr. Boyden: And do you now consent that your case might be tried on the stipulation of your counsel?

Mr. Jessop: Yes, sir.

[fol. 87] Mr. Boyden: And that the case might be tried by the court sitting without a jury, and do you expressly hereby waive a jury trial?

Mr. Jessop: Yes, sir.

CERTIFICATE

I certify that the within pages numbered from 1 to 3, inclusive, contain a true and correct transcript of my shorthand notes of the within proceedings had in said case on March 21, 1944.

E. M. Garnett, Official Reporter.

Filed June 16, 1944.

In United States District Court

Stipulation of Facts—Filed March 21, 1944

Come now parties in the above entitled action, United States of America by Dan B. Shields, United States Attorney, and John S. Boyden, Assistant United States Attorney, the defendant Vergel Y. Jessop, by J. H. McKnight, Claude T. Barnes, and Knox Patterson, Attorneys-at-Law, and stipulate that the above entitled case may be tried before the Court sitting without a jury upon the following statement of testimony, which would, were it not for this stipulation, be introduced by the government:

That Vergel Y. Jessop, the defendant herein, was married on the 10th day of December, 1926, at Salt Lake City, to Verna Spencer, who was 16 years of age, and still is the lawful husband of said Verna Spencer and they have nine children issue of said marriage.

That in August, 1940, Mae Johnson, then a 15 year old girl, went to the home of defendant and Mrs. Jessop, who is a double cousin of said Mae Johnson, to assist with the housework.

That defendant discussed plural marriage with said Mae Johnson who agreed with the principle and defendant thereafter entered into the religious ceremony of the Fundamentalists with said Mae Johnson in January of 1941.

Defendant contends that the Fundamentalists believe in the original teachings and doctrines of the Mormon Church. [fol. 88] That prior to said ceremony defendant courted said Mae Johnson openly before his own wife and children, thereby causing some domestic difficulties.

That after said plural marriage the defendant simultaneously operated two households in various places. That in the month of July, 1943, said Mae Johnson was living in a house provided for her by defendant at Short Creek, Utah, and at the same time his legal wife Verna Spencer Jessop was residing at the house provided for her by defendant in Short Creek, Arizona, that said houses were about two miles apart.

That on or about the 10th day of July, 1943, Verna Spencer Jessop temporarily left her residence at Short Creek, Arizona; that immediately thereafter said defendant, in his 1936 Chevrolet pick-up truck, Motor No. K-6621218, transported said Mae Johnson from Short Creek, Utah, to Short

Creek, Arizona, where he lived with said Mae Johnson as man and wife for a period of approximately one week, during which week the children of defendant by his legal wife Verna Spencer Jessop, witnessed said defendant in bed with said Mae Johnson.

That said defendant has had one child by said Mae Johnson, born April 7, 1943.

Dan B. Shields, United States Attorney. John S. Boyden, Assistant United States Attorney. Claude T. Barnes, J. H. McKnight, Knox Patterson, Attorneys for defendant.

Dated this 21st day of March, 1944.

[fol. 89] IN UNITED STATES DISTRICT COURT

MOTION TO QUASH TRUE BILL

Comes now the defendant, Vergel Y. Jessop, by his counsel and respectfully moves the court to quash each and every count of the alleged true bill in the above entitled matter, for the reasons and upon the grounds:

[The grounds set out in the motion to quash and the challenge to the grand jury panel are identical with the grounds and the challenge in case No. 14478, pages 69 and 70.]

[The motion for verdict for defendant is identical with the motion for verdict for defendant in case No. 14475, which appears at page 14.]

[The minute entry March 22, 1944, re argument on motion to quash etc. is identical with the minute entry in case No. 14478, which appears at page 76.]

[The memorandum opinion is identical with the memorandum opinion in case No. 14475, which appears at page 15.]

[The minute entry of May 22, 1944, is identical with the minute entry in case No. 14475, which appears at page 27.]

IN UNITED STATES DISTRICT COURT

VERDICT BY THE COURT—Filed June 7, 1944

The above named defendant in open court having waived a trial by jury and having consented that said cause may be tried before this Court without a jury upon a written stipulation of facts which has heretofore been submitted to this Court, and briefs having been filed by counsel for the United States of America, and by counsel for the defendant herein, and the matter having been taken under advisement, and the Court having considered the evidence introduced by such stipulations and having also considered the briefs of counsel filed as aforesaid, and the matter having been given due consideration, now,

[fol. 90] Therefore, I, T. Blake Kennedy, District Judge sitting within and for the District of Utah, do hereby find the Defendant Vergel Y. Jessop guilty as charged in the Indictment herein.

Dated: June 7, 1944.

T. Blake Kennedy, United States District Judge, Sitting Within and For the District of Utah.

IN UNITED STATES DISTRICT COURT

MINUTE ENTRY—June 7, 1944

On this 7th day of June, 1944, plaintiff appearing by John S. Boyden, Assistant United States Attorney, and Defendant Jessop appearing in person and by Claude T. Barnes, J. H. McKnight and Knox Patterson, his attorneys. The Court declared Defendant Jessop guilty, and the following verdict was signed and filed in open Court:

[The verdict appears at page 89.]

The said defendant was asked if he had any reason to show why sentence should not be pronounced, and no reason being shown, the Court ordered Defendant Jessop committed to the custody of the Attorney General for imprisonment for the period of three years in an institution to be

designated by the Attorney General. Judgment and Commitment signed by the Court and entered herein. The Court fixed the appeal bond in the sum of $3000.00, and ordered the bond approved by the Clerk. Defendant ordered committed to the custody of the United States Marshal until said bond was approved.

It was further ordered that a certain portion of the court reporter's transcript, wherein said defendant stated in open court that jury proceedings would be waived, together with all proceedings, taken this day, be transcribed by the court reporter and same to be included in the record of appeal.

[fol. 91] IN UNITED STATES DISTRICT COURT

JUDGMENT AND COMMITMENT

On this 7th day of June, 1944, came the United States Attorney, and the defendant Vergel Y. Jessop appearing in proper person, and with counsel and,

The defendant having been convicted on verdict of the Court of the offense charged in the indictment in the above-entitled cause, to-wit: Vio. U. S. C. Title 18, Sec. 398—Mann Act; and the defendant having been now asked whether he has anything to say; why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of Three (3) Years.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

T. Blake Kennedy, United States District Judge.

SUMMARY OF BOND ON APPEAL

Bond in the sum of $3,000.00, Rula K. Broadbent and Jess N. Beagley as sureties, approved by the clerk and filed June 7, 1944.

In United States District Court

Notice of Appeal—Filed June 8, 1944

Vergel Y. Jessop, Short Creek, Arizona, Appellant. Joseph H. McKnight, Atlas Block, Salt Lake City, Utah, Claude T. Barnes, 614 First Nat'l Bank Bldg., Salt Lake City, Utah, Knox Patterson, Boston Building, Salt Lake City, Utah, Attorneys for Appellants.

[fol. 92] Offense: Vio. Sec. 398, T. 18, U.S.C.: Mann Act.

Brief description of judgment or sentence: Three years.

Name of prison where now confined, if not on bail: Defendant is now on bail.

I, the above named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Tenth Circuit from the judgment above mentioned on the grounds set forth below.

Vergel Y. Jessop, Appellant.

Dated June 7th, 1944.

Grounds of appeal:

(a) The Court erred in its failure and refusal to grant the defendant's motion to quash the information in said cause.

(b) The judgment is against law and the evidence.

(c) The statute is not applicable to the facts.

(d) The judgment violates the right of the defendant to the free exercise of religious belief, under the Constitution of the United States, and the Treaty of Guadalupe Hidalgo.

(e) The facts show no intent to violate the statute; and show only an offense against state statutes.

(f) There is no proof of immorality; no proof of debauchery, lasciviousness, indeceney or lewdness, or proof of any act against peace and good order, or against good morals.

Rec'd copy of June 7, 1944.

John S. Boyden, Asst. U. S. Atty.

[fol. 93] IN UNITED STATES DISTRICT COURT

No. 14480, Criminal

UNITED STATES OF AMERICA

vs.

VERGEL Y. JESSOP

FORM OF CLERK'S STATEMENT OF DOCKET ENTRIES TO BE FORWARDED UNDER RULE IV

1. Indictment violation of Section 398, Title 18, U.S.C.A. —Mann Act filed March 6, 1944.

2. Arraignment March 9, 1944.

3. Plea to indictment of "Not Guilty" entered on March 20, 1944.

4. Motion to withdraw plea of guilty denied —, 19—.

5. Trial by court if jury waived March 21, 1944.

6. Verdict or finding of guilt signed by the Court and filed June 7, 1944.

7. Judgment—(with terms of sentence). Defendant committed to the custody of the Attorney General for imprisonment for a period of three (3) years entered June 7, 1944.

8. Notice of appeal filed June 8, 1944.

Date June 8, 1944.

Attest W. B. Wilson, Clerk.

[The assignments of error are identical with the assignments of error in case No. 14475, which appear at page 32.]

[The request for transcript of record is identical with the request for transcript of record in case No. 14475, which appears at page 34.]

[The stipulation and order re bill of exceptions are identical with the stipulation and order re bill of exceptions in case No. 14475, which appear at page 35.]

[fol. 94] [The stipulation re transcript of proceedings on June 7, 1944, is identical with the stipulation re transcript of proceedings in case No. 14475, which appear at page 36.]

[The reporter's transcript of proceedings June 7, 1944, is identical with the transcript of proceedings in case No. 14475, which appears at page 36.]

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 95] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

No. 14481 Criminal

UNITED STATES OF AMERICA, Plaintiff,

v.

WILLIAM CHATWIN, CHARLES F. ZITTING and EDNA CHRISTENSEN, Defendants

INDICTMENT—Filed March 6, 1944

The grand jurors for the United States of America impaneled and sworn in the District Court of the United States for the Central Division of the District of Utah at the November term of said court in the year 1943, and inquiring for said District of Utah, upon their oath present:

That heretofore, to-wit, on or about August 15, 1941, at Provo in the Central Division of the District of Utah, a person, to-wit, Dorothy Wyler, a minor child, age 15, was unlawfully inveigled, decoyed and carried away by William Chatwin, alias Ed Samson, Charles F. Zitting and Edna Christensen, hereinafter called defendants, and the said defendants then held and continued until December 9, 1943, to hold said Dorothy Wyler by such unlawful inveigling and decoying, and that on or about November 1, 1941, said defendants, then well knowing said Dorothy Wyler to have

been inveigled, decoyed, carried away and held, as aforesaid, unlawfully and feloniously did transport, cause to be transported and aid and abet in the transporting of said Dorothy Wyler by means of automobile transportation from Provo in the Central Division of the District of Utah by way of El Paso, Texas, to Short Creek in the District [fol. 96] of Arizona; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

A True Bill:

Don Clyde, Foreman of the Grand Jury.

Dan B. Shields, United States Attorney.

IN UNITED STATES DISTRICT COURT

MINUTE ENTRY—March 20, 1944

On this 20th day of March, 1944, plaintiff appearing by John S. Boyden, Assistant United States Attorney, and defendant in person, and by Claude T. Barnes, Knox Patterson and J. H. McKnight, his attorneys. Defendants Chatwin, Zitting and Christensen were arraigned, gave their true names as William Chatwin, Charles F. Zitting and Edna Christensen, waived reading to them of the indictment, and each entered a plea of not guilty. Case set for trial on March 20, 1944.

IN UNITED STATES DISTRICT COURT

MINUTE ENTRY—March 21, 1944

On this 21st day of March, 1944, come again said parties by their respective attorneys as aforesaid, and Defendants Chatwin, Chistensen, and Zitting in person, and said defendants consented that the case might be tried on stipulation of facts and jury expressly waived. Ordered that further hearing be continued until March 22, 1944.

IN UNITED STATES DISTRICT COURT

PORTION OF REPORTER'S TRANSCRIPT—March 21, 1944

Mr. Boyden: William Chatwin, Charles F. Zitting and Edna Christensen.

Mr. Chatwin, you are one of the defendants in case No. 14481?

Mr. Chatwin: Yes, sir.

[fol. 97] Mr. Boyden: Edna Christensen, you are also a defendant in the same case?

Mrs. Christensen: Yes, sir.

Mr. Boyden: Mr. Zitting, you are also a defendant in the same case?

Mr. Zitting: Yes, sir.

Mr. Boyden: Now, do you and each of you hereby expressly waive a jury trial and consent that your case might be tried before the court sitting without a jury on the stipulation as entered by your counsel?

Mr. Chatwin: Yes, sir.

Mrs. Christensen: Yes, sir.

Mr. Zitting: Yes, sir.

Certificate

I certify that the within pages numbered 1 to 3, inclusive, contain a true and correct transcript of my shorthand notes of the within proceedings had in said case on March 21, 1944.

E. M. Garnett, Official Reporter.

Filed June 16, 1944.

IN UNITED STATES DISTRICT COURT

STIPULATION OF FACTS—Filed March 21, 1944

Come now parties in the above entitled action, United States of America by Dan B. Shields, United States Attorney, and John S. Boyden, Assistant United States Attorney, the defendants William Chatwin, Charles F. Zitting and Edna Christensen, by J. H. McKnight, Claude T. Barnes, and Knox Patterson, Attorneys-at-Law, and stipulate that the above entitled cases may be tried before the Court sitting without a jury upon the following statement

of testimony, which would, were it not for this stipulation, be introduced by the government:

That after the death of the legal wife of the defendant William Chatwin, in the year 1939, one Lulu Cook, of the age of over sixty years, came to his home in Santaquin, Utah, where she continued to reside with him.

[fol. 98] That in August, 1940, the defendant William Chatwin, then sixty-eight years of age, approached the parents of one Dorothy Wyler with respect to having said Dorothy Wyler work as a housekeeper for him. Said Dorothy Wyler was then a girl of fourteen years and eight months of age, backward in school and with an I.Q. of 67, and a mental age of 7 years and 2 months. The parents of Dorothy Wyler consented that she might act as such housekeeper, whereupon she entered into such duties. While residing at the home of William Chatwin she was continually taught by William Chatwin and Lulu Cook that celestial or plural marriage was essential to her salvation. The defendant Chatwin told said Dorothy Wyler that it was her grandmother's desire that he should take her in celestial marriage and that such plural marriage was in conformity with the true *principals* and teachings of the Mormon Church as orginally founded. She was further taught that the Mormon church as now constituted is not following the law of God but purely following the law of man. After the constant teachings along this line by the defendant Chatwin, Dorothy Wyler became converted to the *principal* of celestial or plural marriage and went through a religious ceremony of the Fundamentalists Cult without any compliance with the laws of the land on the 19th day of December, 1940. Thereafter, Dorothy Wyler became pregnant, which fact was discovered by the parents of Dorothy Wyler on July 24, 1941. Whereupon her parents informed the juvenile authorities of the circumstances.

On or about the 4th day of August, 1941, Dorothy Wyler was taken into the custody of the juvenile authorities of the State of Utah as a delinquent and was by said Court made a ward thereof on or about said day, and was by said Court on the 8th day of August, 1941 ordered placed in the custody of the Utah County Welfare Department for placement in a foster home, subject to the continuing jurisdiction of the juvenile court.

That on or about the 10th day of August, 1941, Mrs. Theora Marcil, in her official capacity as Juvenile Probation Officer for Utah County, State of Utah, took said Dorothy Wyler, who was then in her custody, to a motion picture show at Provo, Utah. Said Mrs. Marcil left said Dorothy [fol. 99] Wyler at said picture show with two of her own daughters and later returned to call for them. Upon her return Dorothy Wyler requested that she be allowed to stay a short time longer, which consent was given by Mrs. Marcil.

Thereafter, and prior to the second return of Mrs. Marcil, Dorothy Wyler left the picture show and went out onto the street in Provo, where she met Mrs. Lorelda Smith and Mrs. Alberta Wyler, both daughters of defendants Chatwin, who gave her sufficient money to go to Salt Lake City, Utah. When she arrived at Salt Lake City she went to the home of David Darger, a member of said religious cult, where she remained for about two hours before being taken to the home of defendants Charles F. Zitting and Edna Christiansen in Sandy, Utah. While at the home of defendants Zitting and Christensen, also members of the Fundamentalists Cult, all three defendants herein talked with said Dorothy Wyler convincing her that she should abide, as they put it, "by the law of God rather than the law of man" and that she was perfectly justified in running away from the Juvenile Court in order that she might live with defendant Chatwin.

Defendants further convinced said Dorothy Wyler that she should go with them to Mexico to be married legally to defendant Chatwin and then remain in hiding until she reached her majority according to the laws of the State of Utah. Thereafter, on about the 6th day of October, 1941, all defendants, in the Nash Sedan of defendant Zitting, then registered in the name of Elvira C. Olson, one of the plural wives of defendant Zitting, transported said Dorothy Wyler from Salt Lake City, Utah by way of El Paso, Texas, to Juarez, Mexico, where defendant William Chatwin and said Dorothy Wyler went through a civil marriage ceremony on the 14th day of October, 1941. That at said time said Dorothy Wyler gave her age as 18 years. After said marriage ceremony, said defendants William Chatwin, Charles F. Zitting and Edna Christensen transported said Dorothy Wyler in the automobile heretofore described from

Juarez, Mexico to Cedar City, Utah, at which point defendant William Chatwin obtained transportation from another member of the cult, Fred Jessop, to take said Dorothy Wyler to Short Creek, Arizona, where she remained in hiding [fol. 100] until December 9, 1943, when discovered by Federal authorities.

That while said Dorothy Wyler was in hiding in Short Creek, Arizona, she lived with William Chatwin as Mr. and Mrs. Ed. Samson. At Short Creek, Arizona two normal babies were born to her by William Chatwin, the first on the 20th day of November, 1941, the second on the 28th day of June, 1943. That said children were delivered at the residence of said defendant William Chatwin by a member of the cult, to-wit, Lizzie Colvin, a midwife.

That about 18 days after the arrival of defendant Chatwin and Dorothy Wyler in Short Creek, Arizona, Lulu Cook arrived in Short Creek, Arizona and resided on the same premises in a one-room lumber structure approximately two feet from the living quarters of defendant Chatwin and Dorothy Wyler.

That said Dorothy Wyler is now a high grade moron with an I.Q. of 64 and a mental age of 9 years and 8 months. That in June 1940 said Dorothy Wyler was graduated from the ninth grade in school for social reasons.

That the transportation of Dorothy Wyler from Provo to Salt Lake, thence to Juarez, Mexico and finally to Short Creek, Arizona, was without the consent and against the wishes of the parents of said Dorothy Wyler and without authority from the Juvenile Court of Utah County, State of Utah.

That while said Dorothy Wyler was in hiding at Short Creek, Arizona she corresponded and thereby kept in touch with defendants Edna Christensen and Charles F. Zitting.

That at no time between the 15th day of August, 1941 and the 9th day of December, 1943, did the defendants herein, or any one of them, ever inform either the parents of Dorothy Wyler or the Juvenile Court of Utah County as to the whereabouts of said Dorothy Wyler, notwithstanding the fact that said defendants at all times during said period were advised as to where said Dorothy Wyler was secreted.

That Edna Christensen became the plural wife of Charles [fol. 101] F. Zitting in August, 1928, and has been such ever since, and there are eight children issue of such union.

Dan B. Shields, United States Attorney; John S. Boyden, Assistant United States Attorney. Claude T. Barnes, J. H. McKnight, Knox Patterson, Attorneys for Defendants.

Dated this 21st day of March, 1944.

IN UNITED STATES DISTRICT COURT

MOTION TO QUASH TRUE BILL

Come now the defendants, William Chatwin, alias Ed Samson, Charles F. Zitting and Edna Christensen, by their counsel and respectfully move the court to quash each and every count of the alleged true bill in the above entitled matter, for the reasons and upon the grounds:

I

That said true bill does not state an offense against the laws of the United States, and in particular does not state an offense under Sec. 408a, T. 18, U. S. C. A.

[The further grounds set out in the motion to quash and the challenge to the grand jury panel are identical with the grounds and the challenge in case No. 14478, pages 69 and 70.]

[The motion for verdict for defendants is substantially identical with the motion for verdict for defendant in case No. 14475, which appears at page 14.]

[The minute entry March 22, 1944, is identical with the minute entry in case No. 14478, which appears at page 76.]

[fol. 102] [The memorandum opinion is identical with the opinion in case No. 14475, which appears at page 15.]

[The minute entry of May 22, 1944, is identical with the minute entry in case No. 14475, which appears at page 27.]

IN UNITED STATES DISTRICT COURT

VERDICT BY THE COURT—Filed June 7, 1944

The above named defendants in open court haing waived a trial by jury and having consented that said cause may be tried before this Court without a jury upon a written stipulation of facts which has heretofore been submitted to this Court, and briefs having been filed by counsel for the United States of America, and by counsel for the defendants herein, and the matter having been taken under advisement, and the Court having considered the evidence introduced by such stipulations and having also considered the briefs of counsel filed as aforesaid, and the matter having been given due consideration now,

Therefore, I, T. Blake Kennedy, District Judge sitting within and for the District of Utah, do hereby find tne Defendants William Chatwin, Charles F. Zitting and Edna Christensen guilty as charged in the Indictment herein.

Dated: June 7, 1944.

T. Blake Kennedy, United States District Judge
Sitting within and for the District of Utah.

IN UNITED STATES DISTRICT COURT

MINUTE ENTRY—June 7, 1944

On this 7th day of June, 1944, plaintiff appearing by John S. Boyden, Assistant United States Attorney, and defendants, William Chatwin, Charles F. Zitting and Edna Christensen, appearing in person and by Claude T. Barnes, J. H. McKnight and Knox Patterson, their attorneys. The Court declared each of said defendants guilty, and the [fol. 103] following verdict was signed and filed in open court:

[The verdict appears at page 102.]

The said defendants were asked if they had any reason to show why sentence should not be pronounced, and no

reason being shown, the Court ordered Defendants Chatwin and Zitting committed to the custody of the Attorney General for imprisonment for the period of two years, and Defendant Christensen committed to the custody of the Attorney General for imprisonment for the period of one year and one day, in an institution to be designated by the Attorney General. Judgments and Commitments signed by the Court and entered herein. The Court fixed the appeal bond for each defendant in the sum of $3000.00 and ordered the bond approved by the Clerk. Defendants ordered committed to the custody of the United States Marshal until said bonds were approved.

It was further ordered that a certain portion of the court reporter's transcript, wherein said defendant stated in open court that jury proceedings would be waived, together with all proceedings taken this day, be transcribed by the court reporter and same to be included in the record of appeal.

IN UNITED STATES DISTRICT COURT

JUDGMENT AND COMMITMENT

On this 7th day of June, 1944, came the United States Attorney, and the defendant Charles F. Zitting appearing in proper person, and with counsel and,

The defendant having been convicted on verdict of the Court of the offense charged in the Indictment in the above-entitled cause, to-wit: U. S. C. Title 18, Sec. 408a—Persons unlawfully detained and transported and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been [fol. 104] found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of Two (2) Years.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

T. Blake Kennedy, United States District Judge.

IN UNITED STATES DISTRICT COURT

JUDGMENT AND COMMITMENT

On this 7th day of June, 1944, came the United States Attorney, and the defendant Edna Christensen appearing in proper person, and with counsel and,

The defendant having been convicted on verdict of the Court of the offense charged in the Indictment in the above-entitled cause, to-wit: U. S. C. Title 18, Sec. 408a—Persons unlawfully detained and transported and the defendant having been now asked whether she has anything to say why judgment should not be pronounced against her, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of One year (1) and One day (1).

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

T. Blake Kennedy, United States District Judge.

[fol. 105] IN UNITED STATES DISTRICT COURT

JUDGMENT AND COMMITMENT

On this 7th day of June, 1944, came the United States Attorney, and the defendant William Chatwin appearing in propert person, and with counsel and,

The defendant having been convicted on verdict of the Court of the offense charged in the Indictment in the above-entitled cause, to-wit: U. S. C. Title 18, Sec. 408a—Persons unlawfully detained and transported and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized repre-

sentative for imprisonment for the period of Two (2) Years. It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

T. Blake Kennedy, United States District Judge.

SUMMARY OF BONDS ON APPEAL

Bond for Defendant Christensen in the sum of $3000.00, Leah Woolley and Rula K. Broadbent as sureties, approved by the clerk and filed June 7, 1944.

Bond for Defendant Chatwin in the sum of $3000.00, Spencer Warner and Mrs. M. C. Cook as sureties, approved by the clerk and filed June 7, 1944.

Bond for Defendant Zitting in the sum of $3000.00, Elvira B. Olson and Alfred Olschowski as sureties, approved by the clerk and filed June 7, 1944.

[fol. 106] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed June 8, 1944

William E. Chatwin, RFD Santaquin, Utah County, Utah; Charles F. Zitting, Sandy, Utah; Edna Christensen, Sandy, Utah, Appellants.

Joseph H. McKnight, Atlas Bldg., Salt Lake City, Utah, Claude T. Barnes, 614 First Nat'l Bank Bldg., Salt Lake City, Utah, Knox Patterson, Boston Building, Salt Lake City, Utah, Attorneys for Appellants.

Offense: Vio. Sec. 408a, T. 18, U. S. C. A.: Lindbergh Act.

Brief description of judgment or sentence: The two men two years each; Edna Christensen 1 year and 1 day.

Name of prison where now confined, if not on bail: Defendants now on bail.

We, the above named appellants, hereby appeal to the United States Circuit Court of Appeals for the Tenth Circuit from the judgment above mentioned on the grounds set forth below.

Edna Christensen, Charles F. Zitting, William E. Chatwin, Appellants.

Dated June 7, 1944.

Grounds of Appeal:

(a) Court erred in overruling defendants' motion to quash.

(b) Judgment is against law and the evidence.

(c) The statute is not applicable to facts.

(d) Facts show no intent to violate law.

(e) There is no law or decision of courts in Utah adjudging the practice of plural marriage to be immoral, a debauchery, indecent or against public morals or in violation of peace, good order or good morals.

[fol. 107] (f) The facts show no intent to violate the statute; and show only an offense against state statutes.

Rec'd copy June 7, 1944.

John S. Boyden, Asst. U. S. Atty.

In United States District Court

Form of Clerk's Statement of Docket Entries to Be Forwarded under Rule IV

No. 14481, Criminal

United States of America

vs.

William Chatwin, et al.

1. Indictment for violation Section 408a, T. 18, U. S. C. A. —person unlawfully detained and transported filed March 6, 1944.

2. Arraignment March 20, 1944.

3. Plea to indictment of "Not Guilty" entered on March 20, 1944.

4. Motion to withdraw plea of guilty denied —, 19—.

5. Trial by court if jury waived March 21, 1944.

6. Verdict or finding of guilt signed by the Court and filed June 7, 1944.

7. Judgment—(with terms of sentence) Defendant committed to the custody of the Attorney General for imprisonment for a period of two (2) years entered June 7, 1944.

8. Notice of appeal filed June 8, 1944.

Date June 8, 1944.

Attest W. B. Wilson, Clerk.

IN UNITED STATES DISTRICT COURT

FORM OF CLERK'S STATEMENT OF DOCKET ENTRIES TO BE FORWARDED UNDER RULE IV

No. 14481, Criminal

UNITED STATES OF AMERICA

vs.

EDNA CHRISTENSEN, et al.

[fol. 108] 1. Indictment for violation of Section 408a, Title 18, U. S. C. A.—Persons unlawfully detained and transported filed March 6, 1944.

2. Arraignment March 7, 1944.

3. Plea to indictment of "Not Guilty" entered on March 20, 1944.

4. Motion to withdraw plea of guilty denied —, 19—.

5. Trial by court if jury waived March 21, 1944.

6. Verdict or finding of guilt signed by the Court and filed June 7, 1944.

7. Judgment—(with terms of sentence) Defendant Christensen committed to the custody of the Attorney General for imprisonment for a period of one (1) year and one (1) day entered June 7, 1944.

8. Notice of appeal filed June 8, 1944.

Date June 8, 1944.

Attest W. B. Wilson, Clerk.

IN UNITED STATES DISTRICT COURT

FORM OF CLERK'S STATEMENT OF DOCKET ENTRIES TO BE FORWARDED UNDER RULE IV

No. 14481, Criminal

UNITED STATES OF AMERICA

vs.

CHARLES F. ZITTING, et al.

1. Indictment for violation of Section 408a, Title 18, U. S. C. A.—Persons unlawfully detained and transported filed March 6, 1944.

2. Arraignment March 20, 1944.

3. Plea to indictment of "Not Guilty" entered on March 20, 1944.

4. Motion to withdraw plea of guilty denied —, 19—.

5. Trial by court if jury waived March 21, 1944.

6. Verdict or finding of guilt signed by the Court and filed June 7, 1944.

[fol. 109] 7. Judgment—(with terms of sentence) Defendant Zitting committed to the custody of the Attorney General for imprisonment for a period of Two (2) years entered June 7, 1944.

8. Notice of appeal filed June 8, 1944.

Date June 8, 1944.

Attest W. B. Wilson, Clerk.

IN UNITED STATES DISTRICT COURT

ASSIGNMENTS OF ERROR—Filed June 21, 1944

I

The Court erred in its failure and refusal to grant the defendants' Motion to Quash the information in said cause.

II

The Court erred in its failure and refusal to find that the grand jury, finding the True Bill in said cause, was prejudiced and biased against these defendants.

III

The Court erred in finding the facts in the case, and the prosecution thereof, were applicable to Section 408a T. 18 U. S. C. A., known as the Lindbergh Act.

IV

The Court erred in denying these defendants' constitutional rights, under the Constitution of the State of Utah, under Article 1, sections 1, 4, 7, 11, 12 and 24; Article 3, and Article 6, sub-sections 5 and 18; and likewise erred in denying these defendants' constitutional rights under the 1st, 4th, 5th, 6th, 8th and 14th amendments to the Constitution of the United States.

V

The Court erred in disregarding the defendants' rights under the Treaty of Guadalupe Hidalgo, in the free exercise of their religion.

VI

The Court erred in finding the defendants had a criminal [fol. 110] intent in the commission of the acts charged in the information, and shown by the stipulated testimony in said cause.

VII

The Court erred in finding that these defendants violated the laws of the State of Utah, in connection with Federal statutes to give rise to federal prosecutions.

VIII

The Court erred in finding that the doctrine of ejusdem generis had no application under the so-called Lindbergh Act.

IX

The Court erred in finding these defendants guilty under the charge as laid, and under the stipulated testimony in

the case, and against the plea of not guilty entered by these defendants.

X

The Court erred in its failure and refusal to give these defendants the opportunity to file their motion for new trial as provided by the statutes and rules of this court in such case made and provided.

XI

The Court erred in sentencing these defendants under the finding of guilty, in that the Court lost jurisdiction by reason of its failure and refusal to grant these defendants the opportunity of filing a motion for new trial in said cause, and by reason of all of the assignments herein made.

XII

The Court erred in failing to find that the commission of the act charged under the stipulated testimony, was the result of an honest, Christian and Biblical belief.

XIII

(a) The Court erred in finding the defendants guilty because the defendants violated a state statute, and that such violation alone constituted prostitution and debauchery.

(b) And the Court erred in this by reason of entire lack of jurisdiction under or by reason of the provisions of a state statute.

[fol. 111]

XIV

The Court erred in passing upon the morals, or the contrary, involved in a marriage relation, such being a peculiar and exclusive prerogative of State Legislators and State Courts, and the entire lack of both legislative or judicial determination by the State of Utah.

Claude T. Barnes, J. H. McKnight, Knox Patterson,
Attorneys for Defendants.

Edw. D. Hatch, of Counsel.

Received copy of the above and foregoing Assignments of Error this 21st day of June, 1944.

Dan B. Shields, John S. Boyden, U. S. Attorney.

[The requests for transcript of record in these cases are identical with the request in case No. 14475, which appears at page 34.]

[The stipulation and order re bill of exceptions are identical with the stipulation and order re bill of exceptions in case No. 14475, which appear at page 35.]

[The stipulation re transcript of proceedings on June 7, 1944, is identical with the stipulation re transcript of proceedings in case No. 14475, which appear at page 36.]

[The reporter's transcript of proceedings June 7, 1944, is identical with the transcript of proceedings in case No. 14475, which appears at page 36.]

* * * * * * *

[fol. 112] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 113] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

No. 14483 Criminal

UNITED STATES OF AMERICA, Plaintiff,

v.

THERAL RAY DOCKSTADER and L R. STUBBS, Defendants

INDICTMENT—Filed March 6, 1944

The grand jurors for the United States of America impaneled and sworn in the District Court of the United States for the Central Division of the District of Utah at the November term of said court in the year 1943, and inquiring for said District of Utah, upon their oath present:

That heretofore, to-wit, on or about the 15th day of July, 1943, at 6708 South State Street, Salt Lake County in the Central Division of the District of Utah, Theral Ray Dock-

stader and L. R. Stubbs, hereinafter called defendants, unlawfully and feloniously, by means of automobile transportatoin, to-wit, 1938 International state truck, Motor No. 37116, did knowingly transport, cause to be transported and knowingly aid and assist in obtaining transportation for and in transporting a certain woman, to-wit, Anna Lindgreen, from 6708 South State Street, Salt Lake County, in the Central Division of the District of Utah, to Short Creek, Arizona, then and there for the purpose of debauchery and for a further immoral purpose, to-wit, that the aforesaid woman should unlawfully cohabit with said Theral Ray Dockstader, one of the defendants herein, as his mistress and concubine; contrary to the form of the statute in such case made and provided and against the peace and [fol. 114] dignity of the United States of America.

A True Bill:

Don Clyde, Foreman of the Grand Jury.

Dan B. Shields, United States Attorney.

IN UNITED STATES DISTRICT COURT

MINUTE ENTRY—March 20, 1944

On this 20th day of March, 1944, plaintiff appearing by John S. Boyden, Assistant United States Attorney, and defendant in person, and by Claude T. Barnes, Knox Patterson, and J. H. McKnight, his attorneys. Defendant Dockstader was arraigned, gave his true name as charged, waived reading to him of the indictment and entered his plea of not guilty. Case ordered continued until March 21st for further proceedings.

IN UNITED STATES DISTRICT COURT

MINUTE ENTRY—March 21, 1944

On this 21st day of March, 1944, come again said parties by their respective attorneys as aforesaid, and Defendant Dockstader in person, and it appearing that Defendant Stubbs would be present on March 22nd, further hearing as to both defendants ordered continued until said date.

IN UNITED STATES DISTRICT COURT

MINUTE ENTRY—March 22, 1944

On this 22nd day of March, 1944, plaintiff appearing by John S. Boyden, Assistant United States Attorney, and defendants in person and by J. H. McKnight, Claude T. Barnes and Knox Patterson, their attorneys. Defendant Stubbs was arraigned, gave his true name as charged, waived reading to him of the indictment and entered his plea of not guilty. Bail for Defendants Stubbs fixed in the sum of $2500.00. Defendants Dockstader and Stubbs consented that case might be tried on stipulation of facts and jury expressly waived.

[fol. 115] The Court heard the arguments of counsel on defendants' motion to quash and motion for verdict for defendants, and the motion to quash the indictment was overruled by the Court, and ruling on motion for verdict was held in abeyance until briefs are received by the Court. Defendants granted until April 12th to submit its brief, and plaintiff until May 3rd, and reply brief of defendant to be submitted May 8th. All briefs to be lodged with the Clerk and the Clerk to forward same to Judge T. Blake Kennedy at Cheyenne, Wyoming, at which time the case will be taken under advisement.

IN UNITED STATES DISTRICT COURT

PORTION OF REPORTER'S TRANSCRIPT—March 22, 1944

(Defendants arraigned.)

Mr. Boyden: Mr. Dockstader and Mr. Stubbs, your counsel have prepared a stipulation as to the facts that might be proved by the Government, and the stipulation in terms has been reduced to writing which I now show you. You have gone over that with your counsel?

Mr. Dockstader: Yes, sir.

Mr. Boyden: And you?

Mr. Stubbs: Yes, sir.

Mr. Boyden: And you are both willing that your case might be submitted to the court sitting without a jury, on that statement of facts?

Mr. Dockstader: Yes, sir.

Mr. Stubbs: Yes, sir.

Mr. Boyden: And that you do now both expressly waive trial by jury?

Mr. Dockstader: Yes, sir.

Mr. Stubbs: Yes, sir.

[fol. 116] CERTIFICATE

I certify that the within pages numbered from 1 to 3, inclusive, contain a true and correct transcript of my shorthand notes of the within proceedings in said case on March 22, 1944.

E. M. Garnett, Official Reporter.

Filed June 16, 1944.

IN UNITED STATES DISTRICT COURT

STIPULATION OF FACTS—Filed March 22, 1944

Come now the parties in the above entitled action, United States of America by Dan B. Shields, United States Attorney, and John S. Boyden, Assistant United States Attorney, the defendants Theral Ray Dockstader and L. R. Stubbs, by J. H. McKnight, Claude T. Barnes, and Knox Patterson, Attorneys-at-Law, and stipulate that the above entitled cases may be tried before the Court sitting without a jury upon the following statement of testimony, which would, were it not for this stipulation, be introduced by the government:

That sometime prior to the month of April 1942, Theral Ray Dockstader, one of the defendants herein, entered into a religious ceremony known by the members of that religious cult called Fundamentalists, as celestial or plural marriage, with one Anna Lindgreen.

That during the first part of the month of July, 1943, said defendant, Theral Ray Dockstader, was maintaining two households, one at Short Creek, Arizona, where Leah Kilpack Dockstader resided, the other at 6708 South State Street, Salt Lake County, Utah, where Anna Lindgreen, a

plural wife of said defendant Theral Ray Dockstader, resided.

That his purported marriage with said Anna Lindgreen was contrary to the laws of the land.

[fol. 117] That on or about the 15th day of July, 1943, the defendant Theral Ray Dockstader, and Anna Lindgreen made arrangements with one L. R. Stubbs, also defendant herein, to transport said Anna Lindgreen and a portion of the furniture used in her household by means of a 1938 International Stake truck, Motor No. 37116, owned and registered in the name of L. R. Stubbs, to Short Creek, Arizona, where the said Anna Lindgreen was to live in plural marriage with defendant Theral Ray Dockstader and Leah Kilpack Dockstader.

That at the time of said transportation on, to-wit, the 15th day of July, 1943, L. R. Stubbs was also a member of the religious cut known as the Fundamentalists and was well acquainted with the defendant Theral Ray Dockstader and knew that said Theral Ray Dockstader was living in plural marriage with said Anna Lindgreen and Leah Kilpack Dockstader.

That said defendant, L. R. Stubbs also knew that Theral Ray Dockstader desired to move said Anna Lindgreen to Short Creek, Arizona to live with her in so called celestial marriage.

That on said 15th day of July, 1943, pursuant to the arrangement aforesaid, L. R. Stubbs, the defendant herein, transported Anna Lindgreen and a portion of said furniture, by means of International truck hereinbefore described, from her household at 6708 South State Street in Salt Lake County, Utah, to Short Creek, Arizona, and upon arriving at Short Creek, Arizona the furniture was unloaded from said truck, partially in a house then occupied by Leah Kilpack Dockstader and the remainder was unloaded in a canvas-covered water tank near said premises.

That after said transportation as aforesaid, the defendant Theral Ray Dockstader lived in plural marriage with said Anna Lindgreen at Short Creek, Arizona.

That both defendants, Theral Ray Dockstader and L. R. Stubbs professed a belief in plural marriage as a prerequisite to salvation under the original concepts of the Mormon

[fol. 118] church, claiming the abolition of polygamy in the Mormon church was an act of man and contrary to the law of God.

Dan B. Shields, United States Attorney. John S. Boyden, Assistant United States Attorney. Claude T. Barnes, J. H. McKnight, Knox Patterson.

Dated this 22nd day of March, 1944.

IN UNITED STATES DISTRICT COURT

MOTION TO QUASH TRUE BILL

Come now the defendants, L. R. Stubbs and Theral R. Dockstader, by their counsel, and respectfully move the court to quash each and every count of the alleged True Bill in the above entitled matter, for the reasons and upon the ground:

[The grounds set out in the motion to quash and the challenge to the grand jury panel are identical with the grounds and the challenge in case No. 14478, pages 69 and 70.]

[The motion for verdict for defendant is substantially identical with the motion for verdict for defendant in case No. 14475, which appears at page 14.]

[The memorandum opinion is identical with the memorandum opinion in case No. 14475, which appears at page 15.]

[The minute entry of May 22, 1944, is identical with the minute entry in case No. 14475, which appears at page 27.]

[fol. 119] IN UNITED STATES DISTRICT COURT

VERDICT BY THE COURT—Filed June 7, 1944

The above named defendants in open court having waived a trial by jury and having consented that said cause may be tried before this Court without a jury upon a written

stipulation of facts which has heretofore been submitted to this Court, and briefs having been filed by counsel for the United States of America, and by counsel for the defendants herein, and the matter having been taken under advisement, and the Court having considered the evidence introduced by such stipulations and having also considered the briefs of counsel filed as aforesaid, and the matter having been given due consideration, now,

Therefore, I, T. Blake Kennedy, District Judge sitting within and for the District of Utah, do hereby find the Defendants Theral Ray Dockstader and L. R. Stubbs guilty as charged in the Indictment herein.

Dated: June 7, 1944.

T. Blake Kennedy, United States District Judge
Sitting within and for the District of Utah.

IN UNITED STATES DISTRICT COURT

MINUTE ENTRY—June 7, 1944

On this 7th day of June, 1944, plaintiff appearing by John S. Boyden, Assistant United States Attorney, and Defendants Dockstader and Stubbs appearing in person and by Claude T. Barnes, J. H. McKnight, and Knox Patterson, their attorneys. The Court declared each Defendant guilty, and the following verdict was signed and filed in open court:

[The verdict appears at page 119.]

The said defendants were asked if they had any reason to show why sentence should not be pronounced, and no reason being shown, the Court ordered defendants, Dockstader and Stubbs committed to the custody of the Attorney [fol. 120] General for imprisonment for the period of three years in an institution to be designated by the Attorney General. Judgments and Commitments signed by the Court and entered herein. The Court fixed the appeal bond for each defendant in the sum of $3000.00, and bonds ordered approved by the Clerk. Defendants ordered committed to the custody of the United States Marshal until said bonds were approved.

It was further ordered that a certain portion of the court reporter's transcript, wherein said defendant stated in open

court that jury proceedings would be waived, together with all proceedings taken this day, be transcribed by the court reporter and same to be included in the record of appeal.

IN UNITED STATES DISTRICT COURT

No. 14483

UNITED STATES

v.

THERAL RAY DOCKSTADER, et al.

JUDGMENT AND COMMITMENT

On this 7th day of June, 1944, came the United States Attorney, and the defendant Theral Ray Dockstader appearing in proper person, and with counsel and,

The defendant having been convicted on verdict of the Court of the offense charged in the Indictment in the above-entitled cause, to-wit: U. S. C. Title 18, Sec. 398—Mann Act and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of—Three (3) Years—

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States [fol. 121] Marshal or other qualified officer and that the same shall serve as the commitment herein.

T. Blake Kennedy, United States District Judge.

IN UNITED STATES DISTRICT COURT

No. 14483

UNITED STATES

v.

L. R. STUBBS, et al.

JUDGMENT AND COMMITMENT

On this 7th day of June, 1944, came the United States Attorney, and the defendant L. R. Stubbs appearing in proper person, and with counsel and,

The defendant having been convicted on verdict of the Court of the offense charged in the Indictment in the above-entitled cause, to-wit: U.S.C. Title 18, Sec, 398—Mann Act and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court.

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of Three (3) Years.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

T. Blake Kennedy, United States District Judge.

SUMMARY OF BONDS ON APPEAL

Bond for Defendant Stubbs in the sum of $3,000.00, Rula K. Broadbent and Althea F. Beagley as sureties, approved by clerk and filed June 7, 1944.

[fol. 122] Bond for Defendant Dockstader in the sum of $3,000.00, Barbara Owen Kelsch, Leah Woolley, and Margery DeHart Timpson as sureties, approved by clerk and filed June 7, 1944.

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed June 8, 1944

Theral Ray Dockstader and L. R. Stubbs, Short Creek, Arizona, Appellants.

Joseph H. McKnight, Atlas Block, Salt Lake City, Utah, Claude T. Barnes, 614 First Nat'l Bank Bldg., Salt Lake City, Utah, Knox Patterson, Boston Building, Salt Lake City, Utah, Attorneys for Appellants.

Offense: Vio. Seec. 398, T. 18, U.S.C.: Mann Act.

Brief description of judgment or sentence: Three years each.

Name of prison where now confined, if not on bail: Defendants are now on bail.

We, the above named Appellants, hereby appeal to the United States Circuit Court of Appeals for the Tenth Circuit from the judgment above mentioned on the grounds set forth below.

Theral Ray Dockstader, Appellant. L. R. Stubbs, Appellant.

Dated June 7th, 1944.

Grounds of Appeal:

(a) The Court erred in its failure and refusal to grant the defendant's motion to quash the information in said cause.

(b) The judgment is against law and the evidence.

(c) The statute is not applicable to the facts.

(d) The judgment violates the right of the defendant to the free exercise of religious belief, under the Constitution of the United States, and the Treaty of Guadalupe Hidalgo.

[fol. 123] (e) The facts show no intent to violate the statute; and show only an offense against state statutes.

(f) There is no proof of immorality; no proof of debauchery, lasciviousness, indecency or lewdness, or proof of any act against peace and good order, or against good morals.

Rec'd copy June 7, 1944.

John S. Boyden, Asst. U. S. Atty.

IN UNITED STATES DISTRICT COURT

FORM OF CLERK'S STATEMENT OF DOCKET ENTRIES TO BE FORWARDED UNDER RULE IV

No. 14483, Criminal

UNITED STATES OF AMERICA

vs.

THERAL RAY DOCKSTADER, et al.

1. Indictment violation Sec. 398, Title 18, U.S.C.A.—Mann Act, filed March 6, 1944.

2. Arraignment March 9, 1944.

3. Plea to indictment of 'Not Guilty' entered on March 20, 1944.

4. Motion to withdraw plea of guilty denied —, 19—.

5. Trial by court if jury waived March 22, 1944.

6. Verdict or finding of guilt signed by Court and filed June 7, 1944.

7. Judgment—(with terms of sentence). Committed to the custody of the Attorney General for imprisonment for a period of three (3) years entered June 7, 1944.

8. Notice of appeal filed June 8, 1944.

Date June 8, 1944.

Attest W. B. Wilson, Clerk.

[fol. 124] IN UNITED STATES DISTRICT COURT

FORM OF CLERK'S STATEMENT OF DOCKET ENTRIES TO BE FORWARDED UNDER RULE IV

No. 14483, Criminal

UNITED STATES OF AMERICA

vs.

L. R. STUBBS, et al.

1. Indictment for violation of Section 398, Title 18, U. S. C. A.—Mann Act filed March 6, 1944.

2. Arraignment March 22, 1944.

3. Plea to indictment Not guilty March 22, 1944.

4. Motion to withdraw plea of guilty denied none.

5. Trial by court if jury waived March 22, 1944.

6. Verdict or finding of guilt signed by court and filed June 7, 1944.

7. Judgment—(with terms of sentence). Committed to the custody of the Attorney General for imprisonment for a period of three (3) years entered June 7, 1944.

8. Notice of appeal filed June 8, 1944.

Date June 8, 1944.

Attest. W. B. Wilson, Clerk.

[The assignments of error are identical in substance with the assignments of error in case No. 14475, which appear at page 32.]

[The requests for transcript of record in these cases are identical with the request in case No. 14475, which appears at page 34.]

[The stipulation and order re bill of exceptions are identical with the stipulation and order re bill of exceptions in case No. 14475, which appear at page 35.]

[fols. 125-126] [The stipulation re transcript of proceedings on June 7, 1944, is identical with the stipulation re transcript of proceedings in case No. 14475, which appear at page 36]

[The reporter's transcript of proceedings June 7, 1944, is identical with the transcript of proceedings in case No. 14475, which appears at page 36.]

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 127] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

* * * * * * *

No. 14489 Criminal

UNITED STATES OF AMERICA, Plaintiff

v.

FOLLIS GARDNER PETTY, Defendant

INDICTMENT—Filed March 6, 1944

The grand jurors for the United States of America impaneled and sworn in the District Court of the United States for the Central Division of the District of Utah at the November term of said court in the year 1943, and inquiring for said District of Utah, upon their oath present:

That heretofore, to-wit, on or about the 11th day of August, 1943, at Providence, in the Northern Division of the District of Utah, one Follis Gardner Petty hereinafter called defendant, unlawfully and feloniously, by means of automobile transportation, to-wit, 1941 Studebaker Sedan, Motor No. 144524, did knowingly transport, cause to be transported and knowingly aid and assist in obtaining transportation for and in transporting a certain woman, to-wit, Mary Marguerite Ford, from Pocatello, Idaho, to Providence in the Northern Division of the District of Utah, then and there for the immoral purpose that the aforesaid woman should be and live with him as his mistress and concubine; contrary to the form of the statute in such case

[fol. 128] made and provided and against the peace and dignity of the United States of America.

A True Bill:

Don Clyde, Foreman of the Grand Jury.

Dan B. Shields, United States Attorney.

IN UNITED STATES DISTRICT COURT

MINUTE ENTRY—March 20, 1944

On this 20th day of March, 1944, plaintiff appearing by John S. Boyden, Assistant United States Attorney, and defendant in person, and by Claude T. Barnes, Knox Patterson and J. H. McKnight, his attorneys. Defendant Petty was arraigned, gave his true name as charged, waived reading to him of the indictment and entered his plea of not guilty. Case ordered continued until March 21st for further proceedings.

IN UNITED STATES DISTRICT COURT

MINUTE ENTRY—March 21, 1944

On this 21st day of March, 1944, come again said parties by their respective attorneys as aforesaid, and Defendant Petty in person, and said defendant consented that case might be tried on stipulation of facts and jury expressly waived. Ordered that further hearing be continued until March 22, 1944.

IN UNITED STATES DISTRICT COURT

PORTION OF REPORTER'S TRANSCRIPT—March 21, 1944

Mr. Boyden: Follis Gardner Petty

Mr. Petty, you are the defendant in case No. 14489?

Mr. Petty: Yes, sir.

Mr. Boyden: And you are acquainted with the stipulation that has been agreed upon by your counsel?

Mr. Petty: Yes, sir.

Mr. Boyden: And do you consent that the case might be tried upon that stipulation?

[fol. 129] Mr. Petty: Yes, sir.

Mr. Boyden: And that it might be tried before the court without a jury, and you hereby expressly waive a jury trial?

Mr. Petty: Yes, sir.

Certificate

I certify that the within pages numbered from 1 to 3, inclusive, contain a true and correct transcript of my shorthand notes of the within proceedings had in said case on March 21, 1944.

E. M. Garnett, Official Reporter.

Filed June 16, 1944.

In United States District Court

Stipulation of Facts—Filed March 21, 1944

Come now parties in the above entitled action, United States of America by Dan B. Shields, United States Attorney, and John S. Boyden, Assistant United States Attorney, the defendant Follis Gardner Petty by J. H. McKnight, Claude T. Barnes, and Knox Patterson, Attorneys-at-Law, and stipulate that the above entitled cases may be tried before the Court sitting without a jury upon the following statement of testimony, which would, were it not for this stipulation, be introduced by the government:

That the defendant, Follis Gardner Petty, was married to Iva Campbell at Columbia, Kentucky, on the 31st of December, 1913, and since that time has continued to be her lawfully wedded husband.

That defendant became acquainted with Mary Marguerite Ford, a crippled woman 31 years of age, at Pocatello, Idaho, during hte year 1932, while she was working for Laura B. Berg, County Treasurer of Bannock County, Idaho, and doing work for the L. D. S. Genealogical Society of Idaho in Pocatello.

That during the year 1934 the defendant and his wife both became well acquainted with Mary Marguerite Ford and often talked to her respecting plural or celestial marriages.

[fol. 130] That during that year the defendant paid considerable attention to Miss Ford, and his wife during the

month of May, 1934, proposed plural marriage to Miss Ford on behalf of her husband.

That after a period of argument and discussion Miss Ford became converted to the doctrine of plural marriage and consented to marry the defendant according to the plan and ritual of the religious cult known as Fundamentalists, which the said defendant claimed to be based upon the original concepts of the Mormon Church.

That Joseph Leslie Broadbent, then a member of the Priesthood Council of the Fundamentalists, and now deceased, performed said religious ceremony at Salt Lake City, Utah, on July 7, 1934.

The defendant then promised Miss Ford that he would set up a separate home for her in the very near future, but immediately following her marriage she continued to live with her mother at Pocatello, Idaho, but engaged in sexual relations with the defendant regularly at the defendant's apartment, in the absence of his legal wife, and in a small building at the rear of the Petty apartment used primarily for the storing of furniture.

This relationship continued until Miss Ford became pregnant, and that thereafter the defendant provided various living quarters for her in Salt Lake City, where she bore the defendant three children, one of which died during birth; that these children were all delivered in private homes of members of the cult by members of the cult, to-wit, Louisa C. E. Ogden, a midwife, Dr. Rulon C. Allred, a naturopathic physician and obstetrician, and Dr. LeGrand Woolley, M. D.

That the information furnished with the birth certificates used various names as parents of the children, but on each occasion using the name of Petty as the surname.

That on January 14, 1943, the defendant moved his said plural wife, Mary Marguerite Ford to Providence, Utah, where he continued to live with her as man and wife, commuting between his home in Pocatello and his home in Providence, living with the two wives alternately.

[fol. 131] In July of 1943 defendant consented to a visit by said Mary Ford with her cousin at Driggs, Idaho, and provided her with transportation.

After her visit she returned to Pocatello, where she immediately got in touch with defendant through her mother.

The defendant in his automobile, a 1941 Studebaker sedan, Motor No. 144524, transported Mary Marguerite Ford from

Pocatello, on or about the 11th day of August, 1943, to Providence, Utah, where he had theretofore established living quarters for her.

At this time domestic difficulties were arising between the defendant and Miss Ford. When Petty arrived at Providence, Utah, he proposed sexual relations, but Miss Ford refused, and he returned to Pocatello without actually having such relations.

In the early part of September the defendant came back to Providence, where he again proposed sexual relations, which were again refused. Disrobed, except for his underwear, he forcibly attempted to have relations, placing his knee upon her crippled leg. During the struggle that ensued, someone was heard on the front porch. The defendant immediately abandoned his attempt, and informed Miss Ford that if that was her attitude he had no obligation to further support the children.

Since that time to the commencement of this action the defendant furnished Miss Ford with only five dollars, and she has been forced to rely solely upon public relief for her sustenance.

Dan B. Shields, United States Attorney. John S. Boyden, Assistant United States Attorney. Claude T. Barnes, J. H. McKnight, Knox Patterson, Attorneys for defendant.

Dated this 21st day of March, 1944.

[fol. 132] IN UNITED STATES DISTRICT COURT

MOTION TO QUASH TRUE BILL

Comes now the defendant, Follis Gardner Petty, by his counsel and respectfully moves the court to quash each and every count of the alleged True Bill in the above entitled matter, for the reasons and upon the grounds:

[The grounds set out in the motion to quash and the challenge to the grand jury panel are identical with the grounds and the challenge in case No. 14478, pages 69 and 70.]

[The motion for verdict for defendant is identical with the motion for verdict for defendant in case No. 14475, which appears at page 14.]

[The minute entry March 22, 1944, reargument on motion to quash indictment etc. is identical with the minute entry in case No. 14478, which appears at page 76.]

[The memorandum opinion is identical with the memorandum opinion in case No. 14475, which appears at page 15.]

[The minute entry, May 22, 1944, is identical with the minute entry in case No. 14475, which appears at page 27.]

IN UNITED STATES DISTRICT COURT

VERDICT BY THE COURT—Filed June 7, 1944

The above named defendant in open court having waived a trial by jury and having consented that said cause may be tried before this Court without a jury upon a written stipulation of facts which has heretofore been submitted to this Court; and briefs having been filed by counsel for the United States of America, and by counsel for the defendant herein, and the matter having been taken under advisement, and the Court having considered the evidence introduced by such stipulations and having also considered the briefs [fol. 133] of counsel filed as aforesaid, and the matter having been given due consideration, now,

Therefore, I, T. Blake Kennedy, District Judge sitting within and for the District of Utah, do hereby find the Defendant Follis Gardner Petty, Guilty as charged in the Indictment herein.

Dated: June 7, 1944.

T. Blake Kennedy, United States District Judge
Sitting within and for the District of Utah.

IN UNITED STATES DISTRICT COURT

MINUTE ENTRY—June 7, 1944

On this 7th day of June, 1944, plaintiff appearing by John S. Boyden, Assistant United States Attorney, and Defendant Petty appearing in person and by Claude T.

Barnes, J. H. McKnight and Knox Patterson, his attorneys. The Court declared Defendant Petty guilty, and the following verdict was signed and filed in open Court:

[The verdict appears at page 132.]

The said defendant was asked if he had any reason to show why sentence should not be pronounced, and no reason being shown, the Court ordered Defendant Petty committed to the custody of the Attorney General for imprisonment for the period of three years in an institution to be designated by the Attorney General. Judgment and Commitment signed by the Court and entered herein. The Court fixed the appeal bond in the sum of $3000.00, and ordered the bond approved by the Clerk. Defendant ordered committed to the custody of the United States Marshal until said bond was approved.

It was further ordered that a certain portion of the court reporter's transcript, wherein said defendant stated in open court that jury proceedings would be waived, together with all proceedings taken this day, be transcribed by the court reporter and same to be included in the record of appeal.

[fol. 134] IN UNITED STATES DISTRICT COURT

JUDGMENT AND COMMITMENT

On this 7th day of June, 1944, came the United States Attorney, and the defendant Follis Gardner Petty appearing in proper person, and with counsel and,

The defendant having been convicted on verdict of the Court of the offense charged in the Indictment in the above-entitled cause, to-wit: U. S. C. Title 18, Sec. 398—Mann Act and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of—Three (3) Years—

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States

Marshal or other qualified officer and that the same shall serve as the commitment herein.

T. Blake Kennedy, United States District Judge.

SUMMARY OF BOND ON APPEAL

Bond in sum of $3,000.00, Edna Christensen and Arnold Boss as sureties, approved by clerk and filed June 7, 1944.

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed June 8, 1944

Follis Gardner Petty, Pocatello, Idaho, Appellant.

Joseph H. McKnight, Atlas Block, Salt Lake City, Utah; Claude T. Barnes, 614 First Natl. Bank Bldg., Salt Lake City, Utah; Knox Patterson, Boston Building, Salt Lake City, Utah, Attorneys for Appellant.

[fol. 135] Offense: Vio. Sec. 398, T. 18, U. S. C.: Mann Act.

Brief description of judgment or sentence: Three years.

Name of prison where now confined if not on bail: Defendant is now on bail.

I, the above named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Tenth Circuit from the judgment above mentioned on the grounds set forth below.

Follis G. Petty, Appellant.

Dated June 7th, 1944.

Grounds of Appeal:

(a) The Court erred in its failure and refusal to grant the defendant's motion to quash the information in said cause.

(b) The judgment is against law and the evidence.

(c) The statute is not applicable to the facts.

(d) The judgment violates the right of the defendant to the free exercise of religious belief, under the Constitution of the United States, the Treaty of Guadalupe Hidalgo.

(e) The facts show no intent to violate the statute; and show only an offense against state statutes.

(f) There is no proof of immorality; no proof of debauchery, lasciviousness, indecency or lewdness, or proof of any act against peace and good order, or against good morals.

Rec'd copy June 7, 1944.

John S. Boyden, Asst. U. S. Atty.

[fol. 136] IN UNITED STATES DISTRICT COURT

FORM OF CLERK'S STATEMENT OF DOCKET ENTRIES TO BE FORWARDED UNDER RULE IV

No. 14489, Criminal

UNITED STATES OF AMERICA

vs.

FOLLIS GARDNER PETTY

1. Indictment for violation Sec. 398, Title 18, U. S. C. A.—Mann Act filed March 6, 1944.

2. Arraignment March 20, 1944.

3. Plea to indictment Not guilty March 20, 1944.

4. Motion to withdraw plea of guilty denied none.

5. Trial by court if jury waived March 21, 1944.

6. Verdict or finding of guilt signed by court and filed June 7, 1944.

7. Judgment—(with terms of sentence) Committed to the custody of the Attorney General for imprisonment for a period of three (3) years entered June 7, 1944.

8. Notice of appeal filed June 8, 1944.

Date June 8, 1944.

Attest W. B. Wilson, Clerk.

[The assignments of error are identical with the assignments of error in case No. 14475, which appear at page 32.]

[The request for transcript of record is identical with the request for transcript of record in case No. 14475, which appears at page 34.]

[The stipulation and order re bill of exceptions are identical with the stipulation and order re bill of exceptions in case No. 14475, which appear at page 35.]

[fols. 137-138] [The stipulation re transcript of proceedings on June 7, 1944, is identical with the stipulations re transcript of proceedings in case No. 14475, which appears at page 36.]

[The reporter's transcript of proceedings June 7, 1944, is identical with the transcript of proceedings in case No. 14475, which appears at page 36.]

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 139] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

ORDER OF SUBMISSION

Second Day, November Term, Tuesday, November 14th, A. D. 1944. Before Honorable Orie L. Phillips, Honorable Sam G. Bratton and Honorable Walter A. Huxman, Circuit Judges.

These causes came on to be heard, and were argued by counsel, Claude T. Barnes, Esquire, and Edwin D. Hatch, Esquire, appearing for appellants, John S. Boyden, Esquire, appearing for appellee.

Thereupon these causes were submitted to the court.

IN UNITED STATES CIRCUIT COURT OF APPEALS

Claude T. Barnes and Edwin D. Hatch (J. H. McKnight and Knox Patterson were with them on the brief) for Appellants.

John S. Boyden, Ass't. U. S. Attorney, (Dan B. Shields, U. S. Attorney, and Scott M. Matheson, Ass't. U. S. Attorney, were with him on the brief) for Appellee.

Before Phillips, Bratton and Huxman, Circuit Judges

OPINION—January 4, 1945

BRATTON, Circuit Judge:

Six indictments were returned in the United States Court for Utah, five drawn under section 2 of the Mann Act, 18 U. S. C. A. §398, and one drawn under section 3 of the Kidnapping Act, as amended, 18 U. S. C. A. §408a. The indictment in one case drawn under the Mann Act charged that on a certain date Heber Kimball Cleveland transported a certain woman, not then his wife, in interstate commerce from Salt Lake City, Utah, to Evanston, Wyoming, for the purpose of debauchery, and for the further immoral purpose of having sexual intercourse with her. The other indictments drawn under the Mann Act contained like charges, varying only in name of the accused, name of the woman trans- [fol. 140] ported, date, and points of origin and termination respectively of the transportation. The indictment drawn under the Kidnapping Act charged that the defendants transported, caused to be transported, and aided and abetted in transporting a certain girl in interstate commerce from Provo, Utah, by way of El Paso, Texas, to Short Creek, Arizona, well knowing her to have been inveigled, decoyed, carried away, and held. After trial by jury had been waived, the cases were submitted to the court on stipulated facts. The court found the defendant or defendants in each case guilty as charged in the indictment; and from the sentences imposed, separate appeals were perfected but the cases were briefed and argued together.

A detailed statement of the particular facts in each case would not serve any useful purpose. In most of the cases involving the charge of violating the Mann Act, the defendant was married; while married to his lawful wife, he and the woman named in the indictment went through a cere-

mony known in the religious cult of Fundamentalists as a plural or celestial marriage; after the ceremony they went into another state for the purpose of living and cohabiting together; and they did live and cohabit together there. In one case, the defendant, while married to his lawful wife, and the girl named in the indictment went from Utah to California for the purpose of being married by a celestial ceremony and then living together as man and wife. After the ceremony they spent the night together and engaged in sexual intercourse, but the following day she refused to go further with their marriage. And in one case, one of the defendants was living in a state of plural marriage with the woman named in the indictment; and at their request, the other defendant, also a member of the Fundamentalist cult, transported the woman in interstate commerce in order that the cohabitation in plural marriage might continue. In some instances, the celestial ceremony was performed by a member of the Priesthood Council of the cult. In others, the record fails to indicate the position or title of the person performing it. In the case involving the charge of violating the Kidnapping Act, a girl fourteen years old but having the mental capacity of a child about seven years of age was employed by one of the defendants as a house-[fol. 141] keeper. They went through a celestial ceremony, and she later became pregnant. Discovering her condition, her parents informed the juvenile authorities; and she was placed in the custody of the Welfare Department of the state, subject to the continuing jurisdiction of the court. With some aid, she escaped and went to the home of the other two defendants. There the three defendants persuaded and convinced her that she should abide "by the law of God rather than the law of man"; that she was justified in running away from the Juvenile Court; that she should go with them to Mexico to be legally married to the defendant in whose home she had been employed; and that she should then remain in hiding until she reached her majority. After thus persuading and convincing the girl, all three defendants transported her from Salt Lake City to Juarez, Mexico, where a civil marriage ceremony was performed. They then transported her to a point in Utah. There the defendant who had assumed to marry her in the manner outlined obtained transportation from another member of the cult, and she was taken to Short Creek, Arizona, where she remained in hiding for more than two years, until discov-

ered by federal authorities. While in hiding, she and the defendant last referred to continued to live together as man and wife.

It is contended that the court erred in denying the motion to quash the indictment in each case. The ground relied upon in each instance was that the grand jury which returned the indictment, and each member thereof, was prejudiced against the defendant and was therefore disqualified to sit as a grand juror in the matter; and that the return of the indictment by grand jurors of that kind constituted a wrongful invasion of the rights of the defendant. An affidavit of the defendant was attached to the motion, in which it was stated that he was an earnest and profound believer in the doctrines and principles of the Church of Jesus Christ of Latter-day Saints, commonly referred to as the Mormon Church; that he believed in, taught, and practiced the doctrine of plural marriages; that about the year 1920 a breach arose in the church with reference to the practice of polygamy, resulting in factional disagreement and intense bitterness; that due to such bitterness, the dominating high [fol. 142] priesthood of the church aided, assisted, and incited the convening of the grand jury and the return of the indictment; that the foreman of the grand jury was a prominent and dominating figure in the high priesthood quorums of the church; that, upon information and belief, a large majority of the grand jurors, if not all of them, were likewise influential members of the church; and that the indictment was returned in a spirit of animosity and enmity toward the defendant. There is no need to explore the question of law whether in a United States court an indictment regular on its face may be attacked by motion to quash on the ground that some or all members of the grand jury which returned it were prejudiced against the accused. Except the ex parte affidavit attached to the motion, which contained many allegations predicated upon information and belief, there was no showing that the foreman or any other member of the grand jury belonged to any particular religious sect, or that he bore any animosity, enmity, or prejudice against the defendant. Neither was there any showing that due to prejudice or other like attitude toward the defendant, the foreman or any other membe xerted or sought to exert influence with members of the b in bringing about the return of the indictment. Assuming, without so deciding,

that the indictments were subject to attack on the ground indicated, the motions and ex parte affidavits, alone and without more, were not enough to warrant the quashing of them.

The judgments in the cases charging the violation of the Mann Act are challenged for lack of jurisdiction of the court. The argument is that it is the function of the states to regulate marriage and divorce within their respective borders; and that a United States court has no jurisdiction in cases of this kind to forbid, regulate, or declare upon the form, type, or number of marriages permissible in the state, or to declare that a polygamous marriage is bad in itself, or that it is a form of prostitution or debauchery. It does lie within the exclusive jurisdiction of the states to regulate and control marriage and divorce within their respective borders. And plural marriages are forbidden by the law of the state where these celestial ceremonies occurred, and by the law of the states into which the women and girls named [fol. 143] in the indictments were transported. But the Mann Act, supra, does not undertake to declare what marriages shall be legal and what illegal. It does not concern itself with that question. Instead, it is addressed to the matter of interstate commerce. Section 2 provides that it shall be unlawful to transport or aid in the transportation in commerce of any woman or girl for the purpose of prostitution, debauchery, or any other immoral purpose. Article 1, section 8, of the Constitution of the United States empowers Congress to regulate commerce among the states. That grant of power is direct, plenary, and without limitation except as limited by the Constitution itself. And within the permissible range of exertion of the power lies authority to enact all appropriate legislation for the protection and advancement of commerce. National Labor Relations Board v. Jones & Laughlin, 301 U. S. 1. Congress is free in the exercise of its discretion in respect to means of protecting and advancing commerce to adopt any means which appear to it as appropriate and adapted to the end in view, provided it is consistent with the letter and spirit of the Constitution. Everard's Breweries v. Day, 265 U. S. 545. And it is no basis for valid objection that the means adopted have the same quality and are attended by the same incidents which attend the police power of the states. United States v. Carolene Products Co., 304 U. S. 144.

Commerce among the states consists of intercourse and traffic among its citizens. It includes the transportation of persons as well as property. While the states alone can penalize the practice of prostitution, debauchery, or other immoral conduct within their respective borders, Congress has power under the constitutional provision, supra, to forbid such practices and conduct through the channels of interstate commerce. And it is within the constitutional range of the power of Congress to prohibit under penalty prostitutes, or persons who engage in debauchery or other immoral practices, being transported in commerce in furtherance of their immoral conduct. Hoke v. United States, 227 U. S. 308; Athanasaw v. United States, 227 U. S. 326; Wilson v. United States, 232 U. S. 563.

The Mann Act, supra, is not limited to the transportation [fol. 144] in interstate commerce of women and girls for the purpose of prostitution or debauchery. By express provision, it includes their transportation for any other immoral purpose. The primary objective in the enactment of the statute was to eliminate the "white slave" business which employs interstate commerce as a means of procuring and distributing its victims. But it is settled law that the transportation in commerce of a woman or girl for the purpose of her becoming the mistress or concubine of the accused comes within the Act. Caminetti v. United States, 242 U. S. 470. And we think that the transportation in commerce of a woman or girl to whom the accused is not legally married, though they did go through a so-called celestial plural marriage ceremony which was forbidden by the law of the state where it took place, or intend to go through such ceremony with the intent and purpose of living and cohabitating with her, constitutes in law transportation for the purpose of her becoming his mistress and therefore contravenes the Act. Cf. Caminetti v. United States, supra.

The case of Mortensen v. United States, 322 U. S. 369, is not to the contrary. There the accused husband and wife were engaged in the operation of a house of prostitution. They planned an automobile trip to visit the parents of the wife. Two girls employed by them as prostitutes requested to be taken along for a vacation. The four made the interstate trip by motor. After their return, the girls resumed their immoral conduct. It was held that the trip must be treated in its entirety as one of recreation and holiday; that it could not be arbitrarily split into separate parts and

viewed differently; and that since no immoral purpose was contemplated, the statute did not apply. Manifestly, no comparable situation is presented here.

The judgments are attacked on the further ground that they interfere with the freedom of religion. It is argued that the defendants below believe the Divinity and Doctrines of Joseph Smith as published by the early Mormon Church; that they accept those doctrines as their religious guide; and that such doctrines approve plural marriages. The First Amendment to the Constitution provides in effect that Congress shall not enact any law which interferes with the free [fol. 1451] exercise of religion. But the interdiction relates to legislation in respect to religious belief. It does not withhold power to enact legislation forbidding practices arising out of religious opinion. The right to engage in a practice which violates a forbidding Act of Congress valid in other respects cannot be asserted with success merely because the practice arises out of religious conviction. Reynolds v. United States, 98 U. S. 145. The transportation in commerce of a woman to whom the accused is not married, although they did go through a celestial ceremony of plural marriage forbidden by the law of the state, or intend to go through such ceremony, for the purpose of living and cohabiting with her as man and wife, is a practice which Congress has the constitutional power in its protection of commerce to penalize. Caminetti v. United States, supra.

The next contention is that there was no intent to transport the women and girls named in the indictment across state lines for the purpose of prostitution or debauchery. Except in the case of certain statutory offenses, a criminal intent is generally an element of crime; but every person is presumed to intend the necessary and legitimate consequences of that which he does, and it is no defense to a penal act, knowingly and intentionally committed, that it was done with an innocent intent. Gates v. United States, 122 F. (2d) 571, certiorari denied, 314 U. S. 698.

The judgments in the case charging a violation of the Kidnapping Act, supra, are assailed on the ground that the Act is inapplicable to a case of this kind. The Act is not confined to the transportation in interstate commerce of a person who has been kidnapped by physical force and is being unlawfully restrained in order that his captor might secure for himself payment of a pecuniary consideration or something else of material value. Gooch v. United States,

297 U. S. 124. In presently material respect, it makes it unlawful knowingly to transport or cause to be transported, or aid or abet in transporting, in commerce any person who shall have been unlawfully inveigled, decoyed, or carried away for ransom or reward or otherwise. Here, the girl named in the indictment was fourteen years old, but she had the mentality of a child only seven years of age. After one of the defendants and the girl had gone through a celes- [fol. 146] tial ceremony while she was employed as a domestic in his household, after she had become pregnant by him, after she had been placed in the custody of state authorities but subject to the continuing jurisdiction of the court, after she had escaped, and after she had gone to the home of the other two defendants, the three defendants transported her in commerce in order that she might remain in hiding from the court and the Welfare Department and continue to live and cohabit with the defendant in whose home she had been employed. We think it requires no amplification or elucidation to make plain that these acts and the inferences fairly to be drawn from them, considered in their totality, constituted the transportation in commerce of a person who had been inveigled, decoyed, and carried away in order that one of the defendants might secure a benefit to himself, within the meaning of the Act.

It remains to inquire whether any right of the defendants in respect to the filing of motions for new trial was infringed. Rule 1 of the Rules of Practice and Procedure, after plea of guilty, verdict or finding of guilt, in Criminal Cases, 292 U. S. 661, 18 U. S. C. A. following § 688, provides among other things that after a finding of guilt by the trial court where a jury has been waived sentence shall be imposed without delay, unless a motion for a new trial is pending; and Rule 2 provides that motions for a new trial shall be made within three days after the finding of guilt, except that such motions based solely upon the ground of newly-discovered evidence may be made within sixty days after final judgment. After these cases were submitted, the trial court took them under advisement. Thereafter the court filed a written opinion in which the several defendants were adjudged to be guilty of the charges laid in the indictments. The opinion directed that a journal entry be entered to that effect, and that the defendants might remain at libery on their respective bonds, subject to such order as might be made for their appearance for final judgment. Something

more than two weeks later the cases were taken up again, the defendants being present. The court entered formal verdicts of guilty, and then indicated its purpose to impose sentence and enter final judgment. The attorneys for the defendants expressed a desire to file motions for new trial. [fol. 147] In the course of discussion between the court and the attorneys, the court announced:

> "My point is I am here ready to sentence now. If you want to file your motion for a new trial—it says you must file them promptly—you have had two weeks. If you want to do that now you may do it and I will dispose of them at once and then sentence. If you want to defer that, I will sentence now and you can file your motion afterwards. You can use your own judgment in respect to it."

After further discussion, the court recessed until afternoon, and then imposed the sentences. But no motions were filed, then or later. It is clear that there was no infringement upon the right of the defendants to file their motions at any time during the period fixed by the rule.

The judgments are severally Affirmed.

IN UNITED STATES CIRCUIT COURT OF APPEALS

JUDGMENT, CASE NO. 2945

Twenty-eighth Day, November Term, Thursday, January 4th, A. D. 1945. Before Honorable Orie L. Phillips, Honorable Sam G. Bratton and Honorable Walter A. Huxman, Circuit Judges.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Utah and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment and sentence of the said district court in this cause be and the same is hereby affirmed.

It is further ordered by this court that Heber Kimball Cleveland, appellant, surrender himself to the custody of the United States Marshal for the District of Utah, in execution of the judgment and sentence imposed upon him, within ten days from and after the date of the filing of the mandate of this court in said district court.

[fol. 148] In United States Circuit Court of Appeals

Judgment, Case No. 2946

Twenty-eighth Day, November Term, Thursday, January 4th, A. D. 1945. Before Honorable Orie L. Phillips, Honorable Sam G. Bratton and Honorable Walter A. Huxman, Circuit Judges.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Utah and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment and sentence of the said district court in this cause be and the same is hereby affirmed.

It is further ordered by this court that Heber Kimball Cleveland, appellant, surrender himself to the custody of the United States Marshal for the District of Utah, in execution of the judgment and sentence imposed upon him, within ten days from and after the date of the filing of the mandate of this court in said district court.

In United States Circuit Court of Appeals

Judgment, Case No. 2947

Twenty-eighth Day, November Term, Thursday, January 4th, A. D. 1945. Before Honorable Orie L. Phillips, Honorable Sam G. Bratton and Honorable Walter A. Huxman, Circuit Judges.

This cauce came on to be heard on the transcript of the record from the District Court of the United States for the District of Utah and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment and sentence of the said district court in this cause be and the same is hereby affirmed.

It is further ordered by this court that Heber Kimball Cleveland, appellant, surrender himself to the custody of the United States Marshal for the District of Utah, in execution of the judgment and sentence imposed upon him within ten [fol. 149] days from and after the date of the filing of the mandate of this court in said district court.

IN UNITED STATES CIRCUIT COURT OF APPEALS

JUDGMENT, CASE NO. 2948

Twenty-eighth Day, November Term, Thursday, January 4th, A. D. 1945. Before Honorable Orie L. Phillips, Honorable Sam G. Bratton and Honorable Walter A. Huxman, Circuit Judges.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Utah and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment and sentence of the said district court in this cause be and the same is hereby affirmed.

It is further ordered by this court that David Brigham Darger, appellant, surrender himself to the custody of the United States Marshal for the District of Utah, in execution of the judgment and sentence imposed upon him, within ten days from and after the date of the filing of the mandate of this court in said district court.

IN UNITED STATES CIRCUIT COURT OF APPEALS

JUDGMENT, CASE NO. 2949

Twenty-eighth Day, November Term, Thursday, January 4th, A. D. 1945. Before Honorable Orie L. Phillips, Honorable Sam G. Bratton and Honorable Walter A. Huxman, Circuit Judges.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Utah and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment and sentence of the said district court in this cause be and the same is hereby affirmed.

It is further ordered by this court that Vergel Y. Jessop, [fol. 150] appellant, surrender himself to the custody of the United States Marshal for the District of Utah, in execution of the judgment and sentence imposed upon him, within ten days from and after the date of the filing of the mandate of this court in said district court.

IN UNITED STATES CIRCUIT COURT OF APPEALS

JUDGMENT, CASE NO. 2950

Twenty-eighth Day, November Term, Thursday, January 4th, A. D. 1945. Before Honorable Orie L. Phillips, Honorable Sam G. Bratton and Honorable Walter A. Huxman, Circuit Judges.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Utah and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment and sentence of the said district court in this cause be and the same is hereby affirmed.

It is further ordered by this court that William Chatwin, appellant, surrender himself to the custody of the United States Marshal for the District of Utah, in execution of the judgment and sentence imposed upon him, within ten days from and after the date of the filing of the mandate of this court in said district court.

IN UNITED STATES CIRCUIT COURT OF APPEALS

JUDGMENT, CASE NO. 2951

Twenty-eighth Day, November Term, Thursday, January 4th, A. D. 1945. Before Honorable Orie L. Phillips, Honorable Sam G. Bratton and Honorable Walter A. Huxman, Circuit Judges.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Utah and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment and sentence of the [fol. 151] said district court in this cause be and the same is hereby affirmed.

It is further ordered by this court that Charles F. Zitting, appellant, surrender himself to the custody of the United States Marshal for the District of Utah, in execution of the judgment and sentence imposed upon him, within ten days from and after the date of the filing of the mandate of this court in said district court.

IN UNITED STATES CIRCUIT COURT OF APPEALS

JUDGMENT, CASE NO. 2952

Twenty-eighth Day, November Term, Thursday, January 4th, A. D. 1945. Before Honorable Orie L. Phillips, Honorable Sam G. Bratton and Honorable Walter A. Huxman, Circuit Judges.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Utah and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment and sentence of the said district court in this cause be and the same is hereby affirmed.

It is further ordered by this court that Edna Christensen, appellant, surrender herself to the custody of the United States Marshal for the District of Utah, in execution of the judgment and sentence imposed upon her, within ten days from and after the date of the filing of the mandate of this court in said district court.

IN UNITED STATES CIRCUIT COURT OF APPEALS

JUDGMENT, CASE NO. 2953

Twenty-eighth Day, November Term, Thursday, January 4th A. D. 1945. Before Honorable Orie L. Phillips, Honorable Sam G. Bratton and Honorable Walter A. Huxman, Circuit Judges.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Utah and was argued by counsel.

[fol. 152] On consideration whereof, it is now here ordered and adjudged by this court that the judgment and sentence of the said district court in this cause be and the same is hereby affirmed.

It is further ordered by this court that Theral Ray Dockstader, appellant, surrender himself to the custody of the United States Marshal for the District of Utah, in execution of the judgment and sentence imposed upon him, within ten days from and after the date of the filing of the mandate of this court in said district court.

In United States Circuit Court of Appeals

Judgment, Case No. 2954

Twenty-eighth Day, November Term, Thursday, January 4th, A. D. 1945. Before Honorable Orie L. Phillips, Honorable Sam G. Bratton and Honorable Walter A. Huxman, Circuit Judges.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Utah and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment and sentence of the said district court in this cause be and the same is hereby affirmed.

It is further ordered by this court that L. R. Stubbs, appellant, surrender himself to the custody of the United States Marshal for the District of Utah, in execution of the judgment and sentence imposed upon him, within ten days from and after the date of the filing of the mandate of this court in said district court.

In United States Circuit Court of Appeals

Judgment, Case No. 2955

Twenty-eighth Day, November Term, Thursday, January 4th, A. D. 1945. Before Honorable Orie L. Phillips, Honorable Sam G. Bratton and Honorable Walter A. Huxman, Circuit Judges.

[fol. 153-154] This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Utah and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment and sentence of the said district court in this cause be and the same is hereby affirmed.

It is further ordered by this court that Follis Gardner Petty, appellant, surrender himself to the custody of the United States Marshal for the District of Utah, in execution of the judgment and sentence imposed upon him, within ten days from and after the date of the filing of the mandate of this court in said district court.

IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER STAYING MANDATES

Twenty-ninth Day, November Term, Friday, January 5th, A. D. 1945. Before Honorable Orie L. Phillips, Circuit Judge.

These causes came on to be heard on the motion of appellants for a stay of the mandate herein.

On consideration whereof, it is now here ordered that said motion be and the same is hereby granted and that no mandates of this court enter herein for a period of thirty days from this day, and that, if within said period of thirty days there is filed with the clerk of this court a certificate of the clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, with proof of service thereof under section 3 of rule 38 of the Supreme Court, the stay hereby granted shall continue until the final disposition of the cases by the Supreme Court.

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Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 155] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1945

No. 23

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ORDER ALLOWING CERTIORARI—Filed March 12, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 156] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1945

No. 24

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ORDER ALLOWING CERTIORARI—Filed March 12, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 157] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1945

No. 25

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ORDER ALLOWING CERTIORARI—Filed March 12, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 158] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1945

No. 26

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ORDER ALLOWING CERTIORARI—Filed March 12, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 159] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1945

No. 27

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ORDER ALLOWING CERTIORARI—Filed March 12, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 160] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1945

No. 28

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ORDER ALLOWING CERTIORARI—Filed March 12, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 161] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1945

No. 29

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ORDER ALLOWING CERTIORARI—Filed March 12, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 162] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1945

No. 30

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ORDER ALLOWING CERTIORARI—Filed March 12, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 163] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1945

No. 31

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ORDER ALLOWING CERTIORARI—Filed March 12, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 164] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1945

No. 32

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ORDER ALLOWING CERTIORARI—Filed March 12, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 165] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1945

No. 33

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ORDER ALLOWING CERTIORARI—Filed March 12, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: Enter O. A. Tangren. File Nos. 49,348, 49,349, 49,350, 49,351, 49,352, 49,353, 49,354, 49,355, 49,356, 49,357, 49,358. U. S. Circuit Court of Appeals, Tenth Circuit. Term No. 23, Heber Kimball Cleveland, Petitioner, vs. The United States of America. Term No. 24, Heber Kimball Cleveland, Petitioner, vs. The United

States of America. Term No. 25, Heber Kimball Cleveland, Petitioner, vs. The United States of America. Term No. 26, David Brigham Darger, Petitioner, vs. The United States of America. Term No. 27, Vergel Y. Jessop, Petitioner, vs. The United States of America. Term No. 28, Theral Ray Dockstader, Petitioner, vs. The United States of America. Term No. 29, L. R. Stubbs, Petitioner, vs. The United States of America. Term No. 30, Follis Gardner Petty, Petitioner, vs. The United States of America. Term No. 31, William Chatwin, Petitioner, vs. The United States of America. Term No. 32, Charles F. Zitting, Petitioner, vs. The United States of America. Term No. 33, Edna Christensen, Petitioner, vs. The United States of America. Petition for writs of certiorari and exhibit thereto. Filed January 30, 1945. Term Nos. 23 O. T. 1945. 24 O. T. 1945. 25 O. T. 1945. 26 O. T. 1945. 27 O. T. 1945. 28 O. T. 1945. 29 O. T. 1945. 30 O. T. 1945. 31 O. T. 1945. 32 O. T. 1945. 33 O. T. 1945.